

1 THANK YOU.

2 (LUNCH RECESS TAKEN.)

3 (CLERK OPENS COURT.)

4 THE COURT: PLEASE BE SEATED, EVERYBODY.

5 MY DEPUTY HAS TOLD ME THAT YOU ANTICIPATE
6 GOING THROUGH THREE WITNESSES BETWEEN NOW AND 5:30,
7 WHICH IS FINE IF YOU CAN DO IT. AND YOU WANT TO
8 CONTINUE TOMORROW. I AM PREPARED TO MOVE WHAT I HAVE
9 TOMORROW. I HAVE A FINAL PRETRIAL IN A CRIMINAL CASE
10 THAT I'LL MOVE TO THE END OF THE DAY AND A BAIL HEARING
11 THAT I CAN -- I HAVE NOT APPOINTED NEW COUNSEL ANYWAY,
12 SO I CAN PUT THAT OFF. SO I CAN CERTAINLY ACCOMMODATE
13 YOU.

14 MR. ARONCHICK: WE ARE HOPING 5:30 WILL
15 DO IT, IT MIGHT BE 6:00, BUT --

16 THE COURT: OKAY.

17 MR. ARONCHICK: SO WE NEED TO KNOW
18 WHETHER OR NOT THE WITNESS WHO IS GOING TO FLY OUT
19 TONIGHT CAN STAY OVER UNTIL TOMORROW, NOW THAT WE KNOW
20 YOU ARE AVAILABLE. SO WE WILL CHECK.

21 THE COURT: THAT'S FINE. WE CAN MOVE THE
22 HEARING AND YOU CAN CALL THE WITNESSES IN WHATEVER ORDER
23 YOU WANT.

24 MR. KESSLER: YOUR HONOR, ALAN KESSLER,
25 REPRESENTING ES&S.

1 THE COURT: I DON'T THINK THE
2 STENOGRAPHER CAN HEAR YOU. I CAN'T. BUT NICE TO SEE
3 YOU, MR. KESSLER.

4 MR. KESSLER: NICE TO SEE YOU, YOUR
5 HONOR. YOUR HONOR, I REPRESENT ES&S, WE'RE THE AMICUS.
6 AND IT'S OUR WITNESS. IT'S AN ES&S EMPLOYEE WHO FLEW UP
7 ON SUNDAY WHO HAS A 9 O'CLOCK FLIGHT BACK TONIGHT. SO
8 WE ARE GOING TO HAVE TO SEE --

9 THE COURT: HE WAS GOING TO BE A DEFENSE
10 WITNESS?

11 MR. KESSLER: YES.

12 THE COURT: RECOGNIZING THAT AT LEAST AS
13 OF THE CONFERENCE CALL YOU WEREN'T SURE YOU WERE GOING
14 TO PUT ON ANY EVIDENCE AT ALL, DO YOU WANT TO CALL THIS
15 PERSON IF WE HAVE TIME TODAY?

16 MR. WIYGUL: WE CAN DO THAT, YOUR HONOR.
17 ABSOLUTELY.

18 THE COURT: WHY DON'T WE SEE WHERE WE
19 ARE. IF -- I DON'T HAVE A PROBLEM SITTING PAST
20 6 O'CLOCK, BUT THERE IS A LARGE SUPPORT STAFF IN THE
21 BUILDING THAT WILL. AND SO THAT I WOULD LIKE TO RECESS
22 NO LATER THAN 6:00 IF POSSIBLE. AND HOW LONG DO YOU
23 ANTICIPATE THE DIRECT TESTIMONY OF THAT WITNESS WOULD
24 BE, MR. WIYGUL?

25 MR. WIYGUL: IT DEPENDS A LITTLE BIT

1 ABOUT WHAT OTHER WITNESSES SAY, YOUR HONOR, BUT I WOULD
2 SAY PROBABLY 30 TO 40 MINUTES.

3 THE COURT: ALL RIGHT. THEN IF THE THREE
4 WITNESSES ARE NOT DONE BY 4:30 OR 4:45, WE WILL JUST
5 HAVE TO TAKE THAT WITNESS, YOUR WITNESS, MR. KESSLER,
6 OUT OF TURN.

7 MR. KESSLER: WELL, YOUR HONOR, WE WILL
8 CHECK NOW TO SEE WHETHER HE CAN STAY THROUGH TOMORROW.

9 THE COURT: WELL, THAT WOULD BE A GOOD
10 THING. OKAY. THAT WOULD BE FINE, THANK YOU.

11 ALL RIGHT. WOULD YOU LIKE TO CALL YOUR
12 NEXT WITNESS, MR. MAAZEL?

13 MR. MAAZEL: YES, YOUR HONOR. JUST
14 QUICKLY, DO YOU WANT TO MAKE SURE YOU HAVE THE
15 STIPULATIONS IN FRONT OF YOU?

16 THE COURT: I KNOW I DO. I JUST -- I
17 HAVE FOUR LOOSELEAF BOOKS AND I'M NOT SURE --

18 MR. MAAZEL: I HAVE AN EXTRA COPY.

19 THE COURT: OH, THAT WOULD BE WONDERFUL.
20 THANK YOU. IT MIGHT GET LOST AMONG THE FOUR BOOKS, BUT
21 I'LL TRY. THANK YOU.

22 MR. MAAZEL: AND JUST FOR A POINT OF
23 CLARIFICATION, YOUR HONOR, AND THIS WAS MENTIONED IN OUR
24 REPLY BRIEF, GIVEN WHERE WE ARE, THAT IT IS NOW
25 FEBRUARY, WE ARE NOT SEEKING THE DECERTIFICATION OF THE

1 SYSTEM FOR THE PRIMARY THIS YEAR. I WANT TO MAKE THAT
2 CLEAR.

3 THE COURT: OKAY. I WAS UNAWARE OF THAT,
4 BUT OKAY.

5 MR. MAAZEL: WE SAID IN THE END OF OUR
6 REPLY BRIEF THAT WE WERE HOPING THIS WOULD HAPPEN BY THE
7 GENERAL ELECTION, SO...

8 THE COURT: OKAY.

9 MR. MAAZEL: I WANTED TO CLARIFY THAT.

10 THE COURT: THAT'S FINE. I APPRECIATE
11 THE CLARIFICATION, AS I AM SURE THE CITY DOES.

12 MR. MAAZEL: TIMOTHY GATES, WE CALL
13 TIMOTHY GATES, YOUR HONOR.

14 THE COURT: VERY WELL.

15 (WITNESS SWORN.)

16 ----- THE WITNESS: TIMOTHY GATES,
17 T-I-M-O-T-H-Y, GATES, G-A-T-E-S.

18 DIRECT EXAMINATION

19 BY MR. MAAZEL:

20 Q. GOOD AFTERNOON, MR. GATES.

21 A. GOOD AFTERNOON.

22 Q. YOU ARE THE CHIEF COUNSEL TO THE DEPARTMENT OF
23 STATE, CORRECT?

24 A. I AM, YES.

25 Q. YOU HAVE BEEN SINCE 2015?

1 A. THAT'S CORRECT.

2 Q. AND SO THAT WAS YOUR ROLE THROUGHOUT THE COURSE
3 OF THIS CASE?

4 A. YES.

5 Q. AND THE ROLE OF CHIEF COUNSEL PROVIDES LEGAL
6 ADVICE AND COUNSEL TO THE SECRETARY OF THE COMMONWEALTH?

7 A. THAT'S CORRECT.

8 Q. AND YOU PARTICIPATED IN SETTLEMENT DISCUSSIONS
9 IN THIS CASE?

10 A. I DID.

11 Q. AND YOU ATTENDED THE SETTLEMENT CONFERENCE WITH
12 JUDGE RICE?

13 A. I DID.

14 Q. AND YOU PARTICIPATED IN THE MEET AND CONFER THAT
15 WE HAD IN ADVANCE OF THIS MOTION?

16 A. I DID, YES.

17 Q. AND YOU REMAIN COUNSEL OF RECORD FOR DEFENDANTS
18 IN THE CASE AS OF TODAY?

19 A. CORRECT.

20 Q. YOU ARE, OF COURSE, FAMILIAR WITH THE SETTLEMENT
21 AGREEMENT?

22 A. I AM, YES.

23 Q. AND YOU SIGNED IT PERSONALLY?

24 A. I DID.

25 Q. ON BEHALF OF THE DEFENDANTS?

1 A. I DID.

2 Q. AND YOU REVIEWED IT CAREFULLY?

3 A. I DID.

4 Q. AND WE AGREE THAT THAT SETTLEMENT AGREEMENT
5 REFLECTS THE AGREEMENT AMONG THE PARTIES THAT WE'RE
6 DISCUSSING TODAY?

7 A. WE DID.

8 Q. AND JUST TO CLARIFY, FROM SECRETARY BOOCKVAR'S
9 TESTIMONY, IT WAS THE DEFENDANTS WHO SENT THE FIRST
10 DRAFT OF THE SETTLEMENT AGREEMENT, THAT IS CORRECT, YES?

11 A. IT WAS -- YES AND NO. THE SETTLEMENT AGREEMENT
12 THAT WE SENT OVER TO YOU WAS A DRAFT THAT CONTAINED THE
13 TERM SHEET, THE AGREED-UPON TERMS THAT WE HAD NEGOTIATED
14 AND AGREED UPON BEFORE JUDGE RICE. THERE WERE OTHER
15 PROVISIONS THAT WE NEEDED TO INCLUDE FROM THE
16 COMMONWEALTH'S PERSPECTIVE. SO WE TOOK OWNERSHIP OF THE
17 DOCUMENT AT THAT POINT, BECAUSE WE WERE DECIDING ON THE
18 FRAMEWORK OR THE SHAPE OF THAT DOCUMENT, WHETHER IT
19 WOULD BE A CONSENT AGREEMENT AND WHY IT COULDN'T BE A
20 CONSENT AGREEMENT, WHETHER THERE WERE OTHER PROVISIONS
21 WE NEEDED TO INCORPORATE AS WELL.

22 Q. IN ANY EVENT, THE SETTLEMENT AGREEMENT ITSELF,
23 THE FIRST DRAFT OF THAT AGREEMENT YOU DRAFTED AND SENT
24 TO US IN ADVANCE OF SIGNING?

25 THE COURT: MY UNDERSTANDING, AND CORRECT

1 ME IF I'M WRONG, THE TERM SHEET WAS INITIALLY DRAFTED BY
2 THE PLAINTIFFS. THE DEFENDANTS THEN TOOK THE TERM
3 SHEET. AND BASED ON WHAT WAS -- WHAT HAD BEEN
4 NEGOTIATED IN THE TERM SHEET, CREATED THE SETTLEMENT
5 AGREEMENT, WHICH LARGELY INCLUDED WHAT HAD ALREADY BEEN
6 DONE IN THE TERM SHEET, IS THAT CORRECT?

7 THE WITNESS: YES, IT IS, YOUR HONOR.

8 THE COURT: OKAY.

9 BY MR. MAAZEL:

10 Q. AND THERE WERE A NUMBER OF CLAUSES THAT THE
11 DEFENDANTS ADDED TO THE SETTLEMENT AGREEMENT THAT HAD
12 NOT BEEN ON THE TERM SHEET, CORRECT?

13 A. THAT'S CORRECT.

14 Q. FOR EXAMPLE, THE CHOICE OF LAW CLAUSE?

15 A. CORRECT.

16 Q. NOW, VERY BRIEFLY, IF YOU LOOK AT JX 30.

17 A. OKAY.

18 Q. AND THE SETTLEMENT AGREEMENT REQUIRES PAPER
19 BALLOTS FOR EVERY VOTER, CORRECT?

20 A. WHAT IS REQUIRED BY THE SETTLEMENT AGREEMENT IS
21 SPELLED OUT IN PARAGRAPH 2 AND PARAGRAPH 3.

22 Q. YES. VOTER-VERIFIABLE PAPER BALLOTS FOR EVERY
23 VOTER, CORRECT?

24 A. PARAGRAPH 2 MENTIONS THAT IN ORDER FOR THE
25 SECRETARY TO CERTIFY THE MACHINE, IT HAS TO HAVE A

1 BALLOT IN WHICH EACH VOTE IS RECORDED AS PAPER, WITH THE
2 EXCLUSION OF THE VD PATH THAT IS CREATED BY SOME DRE
3 MACHINES. B, THEY PRODUCE A VOTER-VERIFIABLE RECORD OF
4 EACH VOTE. AND THEY ARE CAPABLE OF SUPPORTING A ROBUST
5 PRECERTIFICATION AUDIT -- I DIDN'T READ THAT ENTIRELY.
6 AUDITING PROCESS, EXCUSE ME.

7 Q. NOW, IN THE MEET AND CONFER PROCESS, YOU
8 AUTHORED AND SENT A COUPLE OF LETTERS TO THE PLAINTIFFS,
9 YES?

10 A. YOU ARE GOING TO HAVE TO SPECIFY WHEN YOU ARE
11 TALKING, BECAUSE THERE WERE A BUNCH OF MEET AND CONFERS.
12 ARE YOU TALKING ABOUT BEFORE THE EXECUTED SETTLEMENT
13 AGREEMENT? AFTER YOU TALKING ABOUT AFTER WHERE WE MET
14 AND CONFERRED --

15 Q. TO CLARIFY, IF WE COULD LOOK AT JX 47.

16 A. SURE. OKAY.

17 Q. AND THIS IS A LETTER THAT YOU SENT ON
18 SEPTEMBER 12, 2019 TO THE PLAINTIFFS?

19 A. THAT'S CORRECT.

20 Q. AND THIS IS PART OF THE MEET AND CONFER PROCESS
21 THAT PRECEDED THIS MOTION, YES?

22 A. YES.

23 Q. AND IN THE LETTER, YOU REFER TO THE XL SYSTEM?

24 A. I DID, YES.

25 Q. AND YOU WROTE IN THE FOURTH LINE, QUOTE, THE XL

1 DEVICE PRINTS A PAPER VOTE SUMMARY RECORD WHERE THE
2 VOTER'S SELECTION IS RECORDED IN BOTH A BARCODE AND AS
3 HUMAN READABLE TEXT.

4 A. I THINK THE ENTIRE SENTENCE SAYS THAT: THIS
5 LETTER WILL SERVE AS A RESPONSE TO YOUR LETTER DATED
6 JULY 29, 2019, WHEREIN YOU ALLEGE THAT MY CLIENT IS IN
7 VIOLATION OF THE PARTIES' SETTLEMENT AGREEMENT IN THIS
8 MATTER. IN PARTICULAR, YOU ALLEGE THAT THE ES&S
9 EXPRESSVOTE XL DOES NOT PRODUCE A VOTER-VERIFIABLE
10 RECORD OF EACH VOTE. WE DISAGREE. THE XL DEVICE PRINTS
11 A PAPER VOTE SUMMARY RECORD WITH THE VOTER'S SELECTIONS
12 RECORDED IN BOTH A BARCODE AND A HUMAN READABLE TEXT.

13 Q. YES.

14 AND THAT WAS ACCURATE, WHAT YOU WROTE,
15 CORRECT?

16 A. IT WAS.

17 Q. AND IN THE NEXT SENTENCE, YOU WROTE: AFTER
18 PRINTING, THE XL ALLOWS THE VOTER TO VIEW, VERIFY AND,
19 IF NECESSARY, SPOIL HIS OR HER PAPER RECORD IF IT DOES
20 NOT ACCURATELY REFLECT HIS OR HER CHOICES.

21 A. THAT'S WHAT I WROTE.

22 Q. AND THEN IN THE NEXT SENTENCE YOU REFER TO THE
23 DOCUMENT CREATED BY THE XL AGAIN AS A PAPER RECORD?

24 A. IN THAT SENTENCE, I SAY: IN ADDITION, THE PAPER
25 RECORD IS CAPABLE OF SUPPORTING A ROBUST

1 PRECERTIFICATION AUDIT PROCESS. AND I SAY: THEREFORE,
2 THE XL DEVICE FULLY COMPLIES WITH THE THREE REQUIREMENTS
3 IN THE SETTLEMENT AGREEMENT.

4 Q. OKAY. MY LIMITED POINT IS SIMPLY THAT YOU
5 REFERRED REPEATEDLY TO THE PIECE OF PAPER AS EITHER A
6 PAPER RECORD OR A VOTE SUMMARY RECORD. IS THAT FAIR?

7 A. I THINK I SAID THAT. AND I THINK THAT'S
8 CONSISTENT WITH THE WAY THE SECRETARY, WITH THE WAY THE
9 DEPUTY SECRETARY AND OTHERS HAVE REFERRED TO THESE
10 PIECES OF PAPER THAT ARE PRODUCED BY THESE MACHINES.
11 AND THIS ONE, THE XL IN PARTICULAR.

12 Q. OKAY. IN ANYWHERE IN YOUR LETTER DID YOU EVER
13 CALL THIS DOCUMENT THAT THE XL CREATES A PAPER BALLOT?

14 A. I'LL HAVE TO REVIEW IT. IT'S BEEN A LITTLE BIT
15 SINCE SEPTEMBER.

16 Q. ALL RIGHT.

17 A. OKAY. CAN YOU ASK ME THE QUESTION AGAIN?

18 Q. ANYWHERE IN YOUR LETTER DO YOU REFER TO THE
19 DOCUMENT CREATED BY THE XL AS A PAPER BALLOT?

20 A. I DID NOT.

21 Q. DO YOU EVER REFER TO IT AS A BALLOT?

22 A. I DID NOT.

23 Q. AND IF YOU COULD TURN NOW TO JX 49.

24 A. SURE.

25 Q. AND THIS IS ANOTHER LETTER YOU WROTE TO THE

1 PLAINTIFFS, THIS IS DATED OCTOBER 30, 2019, CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND, AGAIN, THIS IS PART OF THE MEET AND CONFER
4 PROCESS THAT PRECEDED THIS MOTION TO ENFORCE THE
5 SETTLEMENT AGREEMENT, YES?

6 A. YES.

7 Q. AND AT THE END OF THE FIRST PARAGRAPH, YOU
8 WROTE, QUOTE, IN ADDITION, YOU NOW ALLEGE THAT THE
9 SUMMARY CARD IS NOT A PAPER BALLOT AS REQUIRED BY THE
10 AGREEMENT.

11 DO YOU SEE THAT SENTENCE?

12 A. I DO SEE THAT SENTENCE.

13 Q. IN THE NEXT PARAGRAPH, YOU SAID OR YOU STATED,
14 QUOTE, THE XL DEVICE PRINTS A PAPER VOTE SUMMARY RECORD,
15 RIGHT?

16 A. WHERE ARE YOU IN THE PARAGRAPH?

17 Q. IN THE TOP OF THE SECOND PARAGRAPH.

18 A. IT SAYS: FIRST, THE XL DEVICE PRINTS A PAPER
19 VOTE SUMMARY RECORD WITH THE VOTER'S SELECTIONS RECORDED
20 IN BOTH BARCODE AND AS HUMAN READABLE TEXT.

21 Q. AND IN THE NEXT SENTENCE, YOU AGAIN REFER TO
22 THAT PIECE OF PAPER PRODUCED BY THE XL AS A VOTE SUMMARY
23 RECORD, CORRECT?

24 A. CORRECT.

25 Q. AND THEN FIVE LINES DOWN, YOU REFER TO IT AGAIN

1 AS A PAPER RECORD.

2 A. CORRECT.

3 Q. AND SEVEN LINES DOWN, YOU CALL IT A PAPER RECORD
4 AGAIN.

5 A. YES.

6 Q. AT ANY POINT -- I'M SORRY.

7 AND THEN ON THE NEXT PAGE, FOUR LINES
8 DOWN, YOU WROTE, QUOTE, THE XL PRINTS THE VOTER'S
9 CHOICES ON A PAPER VOTE SUMMARY RECORD USING A THERMAL
10 PRINTER, YES?

11 A. I CAN READ THAT, YES.

12 Q. WHAT YOU WROTE IS TRUE AND ACCURATE?

13 A. THAT'S WHAT I WROTE.

14 Q. AND WHAT YOU WROTE IS TRUE AND ACCURATE?

15 A. IT DOES PRINT A RECORD USING A THERMAL PRINTER,
16 YES.

17 Q. OKAY. AND YOU CALL IT A PAPER VOTE SUMMARY
18 RECORD?

19 A. YES.

20 Q. IN THE NEXT LINE, YOU AGAIN CALL IT A VOTE
21 SUMMARY RECORD?

22 A. CORRECT.

23 Q. AND TWO LINES DOWN, CALL IT A VOTE SUMMARY
24 RECORD AGAIN?

25 A. CORRECT.

1 Q. AND TWO LINES DOWN, CALL IT A VOTE SUMMARY
2 RECORD AGAIN?

3 A. CORRECT. AND THAT'S CONSISTENT WITH THE
4 SECRETARY'S REEXAMINATION OF THE MACHINE, WHERE WE WERE
5 USING PHRASEOLOGY THAT WAS USED BY THE VENDOR. WE WERE
6 USING IT BOTH IN THE RECERTIFICATION REPORT AND WE WERE
7 ALSO USING IT HERE AS WELL, TO BE CONSISTENT WITH THE
8 SECRETARY'S USE OF THE TERM.

9 THE COURT: MR. GATES, HE DIDN'T ASK YOU
10 THAT.

11 THE WITNESS: YES, YOUR HONOR.

12 THE COURT: GO ON.

13 BY MR. MAAZEL:

14 Q. AT ANY POINT IN THIS LETTER -- WITHDRAWN.

15 AT THIS POINT, YOU KNOW THAT THERE IS A
16 POTENTIAL RESUMPTION OF THE LITIGATION. YOU KNOW THAT
17 THERE IS A POTENTIAL THAT WE MAY GO TO COURT TO MOVE TO
18 ENFORCE THE AGREEMENT, YES?

19 A. CERTAINLY.

20 Q. AND SO YOU CHOSE YOUR WORDS CAREFULLY, I
21 PRESUME, IN RESPONSE TO THE LETTERS FROM THE PLAINTIFFS?

22 A. I CHOSE MY WORDS CAREFULLY BECAUSE THERE WERE A
23 COUPLE OF THINGS GOING ON AT THE TIME. THERE WAS THE
24 THREAT OF POTENTIAL ENFORCEMENT ACTION FROM YOU. THERE
25 WAS ALSO A REQUEST FOR REEXAMINATION OF THE MACHINE BY

1 ANOTHER PARTY, SO -- AND THEN THERE WAS ALSO THE
2 REEXAMINATION BY THE SECRETARY IN TERMS OF THE
3 PHRASEOLOGY THAT SHE USED AS WELL.

4 Q. AT ANY POINT IN YOUR OCTOBER 30TH LETTER DID YOU
5 CALL THE DOCUMENT CREATED BY THE XL A PAPER BALLOT?

6 A. ANYWHERE IN THIS DOCUMENT?

7 Q. YES.

8 A. NO.

9 Q. OR JUST A BALLOT?

10 A. NO.

11 Q. ARE YOU FAMILIAR WITH THE NIST, OR NATIONAL
12 INSTITUTE OF STANDARDS AND TECHNOLOGIES?

13 A. I AM NOT.

14 Q. WERE YOU FAMILIAR AT THE TIME OF THE SETTLEMENT
15 AGREEMENT?

16 A. I WAS NOT.

17 THE COURT: I FIGURE THE PEOPLE AT NIST
18 ARE REALLY GOING TO BE BLUE WHEN THEY HEAR HOW UNFAMOUS
19 THEY ARE, AT LEAST IN PHILADELPHIA.

20 BY MR. MAAZEL:

21 Q. CAN YOU NOW TURN TO -- WELL, WITHDRAWN.

22 BEFORE THE SETTLEMENT CONFERENCE, WE HAD
23 A CALL WITH JUDGE RICE. DO YOU REMEMBER THAT?

24 A. WITH JUDGE RICE? YOU WILL HAVE TO -- I CAN'T
25 RECALL THE DATE, BUT I DO REMEMBER HAVING A CALL, YES.

1 Q. WELL, DO YOU RECALL JUDGE RICE ASKING BOTH
2 PARTIES TO PREPARE A MEDIATION MEMO IN ADVANCE OF THE
3 CONFERENCE?

4 A. I DO RECALL THAT. WHICH IS TYPICAL, YES. SO
5 YES.

6 Q. AND IF YOU COULD -- AND JUDGE RICE ASKED BOTH
7 PARTIES TO STATE THEIR SETTLEMENT POSITIONS AND WHAT
8 THEY HOPED TO ACHIEVE AT THE CONFERENCE, RIGHT?

9 A. SURE. AND THAT'S -- AGAIN, THAT'S TYPICAL.

10 Q. IF YOU COULD LOOK AT JOINT EXHIBIT 23, PLEASE.

11 A. OKAY.

12 Q. AND DO YOU SEE HERE AN E-MAIL FROM MY COLLEAGUE,
13 DOUG LIEB, TO JUDGE RICE ON SEPTEMBER 26, 2018, SAYING:
14 PLEASE FIND ATTACHED PLAINTIFFS' COMPLETED SETTLEMENT
15 CONFERENCE SUMMARY?

16 A. I DO SEE THE E-MAIL FROM DOUG LIEB TO THE
17 CHAMBERS OF JUDGE RICE. I SEE COPIED ON THE E-MAIL ME,
18 MR. MAAZEL, ALI FRICK, MR. PAPIANOU AND MR. WALDRON.

19 Q. OKAY. AND DO YOU SEE ATTACHED TO THAT A
20 CONFIDENTIAL EX PARTE SETTLEMENT COMMUNICATION, I.E.,
21 PLAINTIFFS' SETTLEMENT MEMO?

22 A. I SEE IN THIS PARTICULAR E-MAIL THERE'S A
23 REFERENCE TO THAT -- AN ATTACHMENT THAT SAYS:
24 PLAINTIFFS' EX PARTE SETTLEMENT CONFERENCE SUMMARY. AND
25 THEN THERE'S A NUMBER THAT IDENTIFIES IT AND THEN

1 THERE'S A PDF EXTENSION THERE AS WELL.

2 Q. OKAY. AND IF YOU CAN JUST TURN TO THAT ACTUAL
3 ATTACHMENT.

4 MR. ARONCHICK: OBJECTION.

5 THE COURT: HAVE YOU EVER SEEN THIS
6 BEFORE?

7 THE WITNESS: I HAVE SEEN NOT, YOUR
8 HONOR. ACTUALLY, I HAVE SEEN IT, BECAUSE IT IS NOW PART
9 OF THE JOINT EXHIBITS, BUT THIS IS THE FIRST THAT I AM
10 SEEING IT --

11 THE COURT: BEFORE YOU PREPARED FOR YOUR
12 TESTIMONY TODAY, HAD YOU EVER SEEN IT?

13 THE WITNESS: NO, YOUR HONOR.

14 THE COURT: IS THERE ANY POINT IN
15 QUESTIONING HIM ABOUT IT?

16 MR. MAAZEL: I JUST WANT TO ASK HIM ABOUT
17 ONE LINE, YOUR HONOR, AND THEN --

18 THE COURT: WELL, ONE LINE, 100 LINES,
19 HE'S NEVER SEEN IT BEFORE. IT IS YOUR POSITION, IT IS
20 YOUR EX PARTE MEMO.

21 MR. MAAZEL: OKAY.

22 BY MR. MAAZEL:

23 Q. DID THE DEFENDANTS PREPARE A MEDIATION MEMO FOR
24 JUDGE RICE AS ORDERED?

25 A. WE DID, YES.

1 Q. AND DID YOU EVER PRODUCE THAT TO THE PLAINTIFFS?

2 A. WE DID NOT.

3 Q. HAVE YOU LISTED YOUR MEDIATION MEMO AS AN
4 EXHIBIT IN THIS PROCEEDING HERE TODAY?

5 A. I DON'T BELIEVE WE DID. I'M NOT SURE ON THAT
6 ONE.

7 Q. DO YOU STILL HAVE A COPY OF THAT MEDIATION MEMO
8 SETTING FORTH YOUR SETTLEMENT POSITION AND YOUR
9 UNDERSTANDING AT THE TIME OF WHAT YOU WERE TRYING TO
10 ACHIEVE?

11 MR. ARONCHICK: OBJECTION.

12 THE WITNESS: I AM SURE I HAVE A RECORD
13 OF IT SOMEWHERE.

14 THE COURT: ASKED AND ANSWERED. HAS IT
15 BEEN MARKED AS AN EXHIBIT FOR THIS PROCEEDING?

16 MR. ARONCHICK: NO. IT'S AN EX PARTE
17 DOCUMENT WE DIDN'T THINK APPROPRIATE TO MARK.

18 MR. MAAZEL: OKAY.

19 BY MR. MAAZEL:

20 Q. DO YOU INTEND, AS COUNSEL FOR DEFENDANTS, TO
21 SHARE WITH THE COURT YOUR MEDIATION MEMO SETTING FORTH
22 YOUR CONTEMPORANEOUS UNDERSTANDING OF WHAT YOU WERE
23 TRYING TO ACHIEVE, JUST LIKE THE PLAINTIFFS HAVE SET
24 FORTH --

25 MR. ARONCHICK: OBJECTION.

1 THE COURT: YOU ARE FIGHTING WITH THE
2 WITNESS. IF YOU WANT ME TO CONSTRUE THEIR FAILURE TO
3 PRODUCE IT AS INDICATING THERE IS SOMETHING IN THERE
4 THEY DON'T WANT ME TO SEE, YOU MAY ARGUE THAT. OR YOU
5 COULD SUBPOENA IT, I SUPPOSE.

6 BY MR. MAAZEL:

7 Q. WE HAD A NUMBER OF DISCUSSIONS BEFORE THE
8 SETTLEMENT AGREEMENT WAS SIGNED, YES?

9 A. WE DID, YES.

10 Q. MEANING PLAINTIFFS' COUNSEL AND DEFENSE COUNSEL?

11 A. INITIALLY, IT WAS MOSTLY THROUGH OUR ATTORNEY,
12 SUE ANN UNGER FROM THE ATTORNEY GENERAL'S OFFICE, BUT
13 THEN EVENTUALLY WE DID HAVE SOME CONVERSATIONS, YES.

14 Q. YOU RECALL THAT IN EARLY SEPTEMBER OF 2018 JUDGE
15 DIAMOND RESOLVED THE MOTION TO DISMISS?

16 A. I DO RECALL THAT, YES.

17 Q. AND DENIED MUCH OF THE MOTION TO DISMISS?

18 A. I AGREE THAT JUDGE DIAMOND DENIED SOME OF THE
19 MOTION TO DISMISS.

20 Q. AND THEN SET FORTH A SETTLEMENT -- I'M SORRY --
21 A DISCOVERY CONFERENCE?

22 A. YES, I DO REMEMBER THAT.

23 Q. AND YOU ATTENDED THAT DISCOVERY CONFERENCE?

24 A. I DID.

25 Q. AND SO DID MS. UNGER?

1 A. SHE DID.

2 Q. AND SO DID PLAINTIFFS' COUNSEL?

3 A. YES. IT DEPENDS -- YOU WERE THERE, I THINK MR.
4 LIEB WAS THERE. I FORGET WHO ELSE WAS THERE. BUT, YES,
5 THERE WERE PLAINTIFFS' COUNSEL THERE.

6 Q. AND DO YOU REMEMBER THERE WAS A CONVERSATION IN
7 THE HALLWAY OUTSIDE OF JUDGE DIAMOND'S CHAMBERS ABOUT
8 SETTLEMENT?

9 MR. ARONCHICK: OBJECTION.

10 THE COURT: MR. MAAZEL, YOU ARE MAKING IT
11 CLEARER AND CLEARER YOU ARE GOING TO HAVE TO BE A
12 WITNESS HERE, BUT YOU ARE FREE TO ANSWER.

13 THE WITNESS: I AM NOT SURE WHICH
14 CONVERSATION YOU'RE TALKING ABOUT.

15 BY MR. MAAZEL:

16 Q. WELL, DO YOU REMEMBER CONVERSATIONS OUTSIDE OF
17 JUDGE DIAMOND'S CHAMBERS IN WHICH SETTLEMENT WAS
18 DISCUSSED?

19 A. I REMEMBER THAT WE HAD CONVERSATIONS ALONG THE
20 SAME LINES THAT WE HAD BEEN HAVING, WHICH IS THAT THE
21 DEPARTMENT IS MOVING IN THE DIRECTION THAT I THINK YOU
22 GUYS ARE GOING TO BE PLEASED WITH. AND I THINK WE HAD
23 AN OPPORTUNITY TO SETTLE THIS CASE BECAUSE, ONE, WE ARE
24 GETTING RID OF THE DRE MACHINES, WHICH I KNOW THAT YOU
25 HATE. AND, TWO, WE ARE MOVING INTO SYSTEMS THAT PROVIDE

1 A VOTER-VERIFIABLE RECORD THAT CAN BE AUDITED.

2 Q. IN ANY OF THE DISCUSSIONS THAT YOU HAD WITH
3 PLAINTIFFS' COUNSEL BEFORE THE SETTLEMENT CONFERENCE,
4 DID YOU OR ANY OF YOUR COLLEAGUES WRITE THAT
5 PENNSYLVANIA WOULD NOT USE PAPER BALLOTS?

6 A. I AM NOT SURE I UNDERSTAND THE QUESTION. DID I
7 OR ANY OF MY COLLEAGUES WRITE THAT PENNSYLVANIA WOULD
8 NOT USE PAPER BALLOTS?

9 THE COURT: WHY DON'T WE JUST START WITH
10 YOU.

11 THE WITNESS: YEAH. I --

12 BY MR. MAAZEL:

13 Q. DID YOU EVER WRITE A DOCUMENT BEFORE THE
14 SETTLEMENT CONFERENCE THAT SAID WE ARE NOT GOING TO
15 AGREE TO PAPER BALLOTS AS PART OF THE SETTLEMENT?

16 A. NO. BUT I THINK WHAT WE COMMUNICATED TO ALL OF
17 YOU WAS PRETTY CLEAR, WHAT WE WERE EXPECTING FROM THE
18 SETTLEMENT NEGOTIATIONS.

19 Q. DID ANY OF YOUR COLLEAGUES WRITE TO THE
20 PLAINTIFFS' COUNSEL THAT THE DEPARTMENT WOULD NOT AGREE
21 TO PAPER BALLOTS, TO YOUR KNOWLEDGE?

22 A. AGAIN, WE DIDN'T NECESSARILY SAY THOSE WORDS.
23 BUT THE POINT WAS, AND WE MADE IT REPEATEDLY, WAS THAT
24 THE DEPARTMENT WAS ON A PATH, AND MY GOAL, AS DIRECTED
25 BY MY CLIENTS, WAS TO EDUCATE YOU AND YOUR CLIENTS THE

1 DIRECTION THAT WE WERE HEADED. BECAUSE WE THOUGHT THAT
2 WE WERE HEADING IN THE SAME DIRECTION. SO WE PROVIDED
3 YOU WITH DOCUMENTS, WE TALKED TO YOU ABOUT THE DIRECTION
4 THAT WE WERE IN, WE PROVIDED YOU AMPLE INFORMATION TO
5 UNDERSTAND WHAT MACHINES THAT WE WERE CERTIFYING IN
6 PENNSYLVANIA AND WHAT THEY PRODUCED.

7 Q. AT ANY POINT DID YOU OR, TO YOUR KNOWLEDGE, ANY
8 OF YOUR COLLEAGUES SAY THAT PENNSYLVANIA WOULD USE
9 SUMMARY RECORDS AS PART OF THE SETTLEMENT AGREEMENT?

10 A. SIMILAR TO THE LAST QUESTION, I AM NOT SURE THAT
11 WE EVER SAID THAT WORD OR WE SAID PAPER BALLOT. I AM
12 NOT SURE OF THE WORDS THAT WE USED, BECAUSE WE USED SOME
13 OF THAT STUFF INTERCHANGEABLY.

14 Q. WELL, DO YOU HAVE ANY MEMORY OF EVER USING THE
15 WORDS "SUMMARY RECORDS" IN THE CONTEXT OF SETTLEMENT
16 DISCUSSIONS?

17 A. THAT I DON'T.

18 Q. DO YOU HAVE ANY MEMORY OF ANYONE SAYING ANYTHING
19 ABOUT BARCODES IN ANY OF THE SETTLEMENT DISCUSSIONS?

20 A. THAT I DON'T.

21 Q. YOU ATTENDED THE SETTLEMENT CONFERENCE, YES?

22 A. I DID, YES.

23 Q. AND YOU RECALL THAT THERE WAS -- WITHDRAWN.

24 WAS THERE A BRIEF MEETING AMONG THE
25 PARTIES BEFORE WE WERE PUT INTO DIFFERENT ROOMS AT THE

1 BEGINNING OF THE CONFERENCE?

2 A. A MEETING WITH JUDGE RICE?

3 Q. YES.

4 A. YES.

5 Q. AND DID THE BULK OF THE CONFERENCE TAKE PLACE
6 WITH US IN DIFFERENT ROOMS?

7 A. NO. THE BULK OF -- OH, YOU MEAN -- I
8 MISUNDERSTOOD YOUR QUESTION. YOU ARE ASKING ME WHETHER
9 OR NOT THE BULK OF THE CONVERSATIONS TOOK PLACE WHERE WE
10 WERE EACH IN OUR SEPARATE ROOMS, YES.

11 Q. AND DO YOU REMEMBER THE PLAINTIFFS' COUNSEL
12 BROUGHT A TERM SHEET?

13 A. YES.

14 Q. AND DISTRIBUTED THAT AT THE BEGINNING OF THE
15 CONFERENCE?

16 MR. ARONCHICK: OBJECTION.

17 THE COURT: OVERRULED.

18 THE WITNESS: I DO. IT WAS THE SAME TERM
19 SHEET THAT WE HAD BEEN GIVEN PRIOR TO THE NEGOTIATION, I
20 BELIEVE.

21 BY MR. MAAZEL:

22 Q. AND THEN OVER THE COURSE OF THE CONFERENCE, WAS
23 THAT TERM SHEET EDITED TO REFLECT THE NEGOTIATIONS?

24 A. I DON'T BELIEVE THAT PARAGRAPH 2 WAS EDITED VERY
25 MUCH, WITH THE EXCEPTION OF MAYBE C. WE DID EDIT

1 SIGNIFICANTLY PARAGRAPH 3, WHERE WE WANTED TO MAKE SURE
2 THAT WE INCLUDED THAT WE WERE CONTINUING TO DIRECT
3 COUNTIES TO USE THESE TYPES OF SYSTEMS RATHER THAN
4 DIRECT COUNTIES TO USE THESE SYSTEMS. BECAUSE, AGAIN,
5 WE THOUGHT IT WAS IMPORTANT TO CAPTURE THAT CONCEPT IN
6 THE AGREEMENT THAT WE WERE MOVING IN THE SAME DIRECTION
7 THAT WE HAD ALREADY BEEN MOVING.

8 THE COURT: MR. MAAZEL, IT'S OFTEN THE
9 CASE WITH LAWYER WITNESSES THAT THEY STILL THINK THEY
10 ARE LAWYERS AND NOT WITNESSES.

11 THE WITNESS: SORRY, YOUR HONOR. I WILL
12 TRY HARDER.

13 THE COURT: THAT'S, PERHAPS, WHY YOU ARE
14 GETTING MORE THAN YOU ASK.

15 THE WITNESS: I WILL TRY HARDER.

16 BY MR. MAAZEL:

17 Q. WAS THERE ANY DISCUSSION ABOUT THE XL SYSTEM AT
18 THE SETTLEMENT CONFERENCE?

19 A. NO, NOT THAT I RECALL.

20 Q. WAS THERE ANY DISCUSSION ABOUT ANY PARTICULAR
21 VOTING SYSTEM AT THE SETTLEMENT CONFERENCE?

22 A. NO, NOT THAT I RECALL. THE ONLY -- I HATE, I'M
23 SORRY TO JUMP IN. BUT THE ONE SYSTEM THAT WE DID
24 DISCUSS WAS RIGHT BEFORE WE WERE TALKING ABOUT THE DRE'S
25 AND THE VVPAT DRE'S. SO THAT WAS A MACHINE WE TALKED

1 ABOUT SPECIFICALLY, TYPE OF MACHINE.

2 Q. A MACHINE THAT USED THE VVPAT?

3 A. CORRECT. A DRE THAT USES THE VVPAT.

4 Q. CAN YOU LOOK AT THE STIPULATIONS, PLEASE,
5 STIPULATION NUMBER 44.

6 A. IS THIS THE LOOSE?

7 Q. YES.

8 A. YOU SAID 44?

9 Q. YES.

10 A. OKAY.

11 Q. ARE YOU LOOKING AT THE STIPULATION NUMBER 44?

12 A. I HAVE IT HERE IN FRONT OF ME, YES.

13 Q. AND THE LAST SENTENCE OF THE STIPULATION WE
14 DISCUSSED EARLIER SAYS: THE DEFENDANTS DID NOT
15 COMMUNICATE THE CERTIFICATION OF THE EVS 6021 SYSTEM TO
16 PLAINTIFFS.

17 DO YOU SEE THAT?

18 A. THE FULL STIPULATION SAYS THAT DEFENDANTS --

19 THE COURT: DO YOU SEE --

20 THE WITNESS: I DO SEE IT, YOUR HONOR.

21 THE COURT: I HAVE READ THE FULL
22 STIPULATION.

23 THE WITNESS: OKAY.

24 THE COURT: GO ON.

25 BY MR. MAAZEL:

1 Q. AND THAT IS A TRUE STATEMENT, CORRECT? THAT
2 LAST SENTENCE?

3 A. I'M NOT SURE THAT I NECESSARILY AGREE WITH THAT,
4 BUT WE DID NOT DIRECTLY COMMUNICATE WITH YOU ABOUT THE
5 CERTIFICATION OF THE SYSTEM.

6 Q. WELL, DID YOU HAVE ANY ROLE IN PREPARING THESE
7 STIPULATIONS?

8 A. I DID REVIEW THEM, YES.

9 Q. ALL RIGHT. DID YOU APPROVE THEM?

10 A. I DON'T KNOW IF I APPROVED THEM, BUT I REVIEWED
11 THEM, YES.

12 Q. AS COUNSEL, YOU UNDERSTAND THE STIPULATION BINDS
13 BOTH PARTIES?

14 A. I DO, YES.

15 Q. OKAY. AND SO IT IS A FACT THAT YOU NEVER
16 COMMUNICATED THE CERTIFICATION OF THE 6021 SYSTEM AT ANY
17 POINT TO THE PLAINTIFFS, YES?

18 A. I DON'T RECALL DOING THAT, YES.

19 Q. AND YOU'RE NOT AWARE OF ANYONE ELSE WHO EVER DID
20 THAT, RIGHT?

21 A. NOT THAT I AM AWARE OF.

22 Q. AND THE 6021 SYSTEM, THAT'S THE SYSTEM THAT WE
23 NOW KNOW CONTAINS THIS XL, RIGHT?

24 A. THAT'S CORRECT.

25 Q. AND WHEN THE DEFENDANTS DID NOT COMMUNICATE THE

1 CERTIFICATION TO THE PLAINTIFFS, THAT INCLUDES BOTH
2 PLAINTIFFS' COUNSEL AND DR. HALDERMAN, CORRECT?

3 A. I PERSONALLY DID NOT NOTIFY YOU OR DR.
4 HALDERMAN.

5 Q. ARE YOU AWARE OF ANYONE WHO EVER TOLD DR.
6 HALDERMAN THAT THIS XL SYSTEM OR THIS 6021 SYSTEM HAD
7 BEEN CERTIFIED?

8 A. NOT DIRECTLY.

9 Q. THIS CERTIFICATION DOCUMENT, CAN YOU LOOK AT JX
10 34, PLEASE, JOINT EXHIBIT 34?

11 A. SURE. OKAY.

12 Q. THIS IS THE CERTIFICATION DOCUMENT THAT THE
13 SECRETARY TESTIFIED EARLIER WAS DONE ON NOVEMBER 30,
14 2018, YES?

15 A. THAT'S WHAT THIS DOCUMENT IS, YES.

16 Q. BUT THE DEFENDANTS NEVER ACTUALLY SENT THIS
17 CERTIFICATION TO THE PLAINTIFFS EVER, CORRECT?

18 A. NOT THAT I RECALL.

19 Q. THE FIRST TIME THE CERTIFICATION EVER POPPED UP
20 IN THE COMMUNICATION TO PLAINTIFFS WAS AFTER YOU POSTED
21 IT ON ECF AFTER WE FILED THE MOTION TO ENFORCE, CORRECT?

22 MR. ARONCHICK: OBJECTION.

23 THE COURT: WELL, YOU MAY HAVE TO TESTIFY
24 TO IT, MR. MAAZEL.

25 DO YOU KNOW?

1 THE WITNESS: DO I KNOW? I DID NOT
2 PERSONALLY PROVIDE THIS DOCUMENT TO MR. MAAZEL.

3 THE COURT: NO, NO. YOU DON'T KNOW WHEN
4 IT WAS PROVIDED TO THE PLAINTIFFS, IF AT ALL.

5 THE WITNESS: I DON'T KNOW THAT.

6 THE COURT: OKAY.

7 BY MR. MAAZEL:

8 Q. NOW, CAN YOU LOOK AT THE STIPULATIONS AGAIN?
9 SPECIFICALLY NUMBER 71. DO YOU SEE THAT IT'S STIPULATED
10 THAT ON JULY 16, 2019, THE DEPARTMENT RECEIVED A
11 PETITION TO REEXAMINE THE EXPRESSVOTE XL?

12 A. I DO SEE THAT, YES.

13 Q. THAT IS TRUE, CORRECT?

14 A. THAT'S WHAT WE STIPULATED TO, YES.

15 Q. AND THIS WAS A PETITION BROUGHT BY AN
16 ORGANIZATION CALLED CITIZENS FOR BETTER ELECTIONS?

17 A. THAT'S CORRECT.

18 Q. AND ANOTHER ORGANIZATION CALLED FREE SPEECH FOR
19 PEOPLE?

20 A. CORRECT.

21 Q. AND THEY SUBMITTED A WHOLE NUMBER OF CHALLENGES
22 TO THE XL SYSTEM, CORRECT?

23 A. THEY DID, YES.

24 Q. TEN SEPARATE CHALLENGES, APPROXIMATELY?

25 A. SOUNDS ABOUT RIGHT.

1 Q. AND AS A RESULT OF THAT PETITION TO REEXAMINE
2 THAT YOU RECEIVED IN JULY 16, YOUR DEPARTMENT HAD TO
3 DETERMINE WHETHER OR NOT TO RECERTIFY THE SYSTEM,
4 CORRECT?

5 A. THE DEPARTMENT, BASED ON THE PETITION, HAD TO
6 REEXAMINE THE SYSTEM TO DETERMINE WHETHER OR NOT IT
7 COULD CONTINUE TO BE CERTIFIED, YES.

8 Q. AND UNTIL YOU DID THE REEXAMINATION, YOU DIDN'T
9 KNOW WHAT -- WHETHER THE SYSTEM WOULD BE RECERTIFIED OR
10 NOT, CORRECT?

11 A. THAT'S CORRECT.

12 Q. AND SO YOU HAD TO DO THE TESTING FIRST AND THE
13 ANALYSIS LATER?

14 A. WE HAD TO DETERMINE WHAT TYPE OF TESTING WAS
15 NECESSARY FIRST. THEN WE DID THE TESTING. AND THEN WE
16 DID THE ANALYSIS.

17 Q. AND IF AS A RESULT OF THIS PETITION TO REEXAMINE
18 THAT WAS FILED IN MID-JULY THE DEPARTMENT DECIDED NOT TO
19 RECERTIFY, THEN NEITHER PHILADELPHIA NOR ANY OTHER
20 COUNTY COULD USE THE SYSTEM, CORRECT?

21 A. IF THE SECRETARY HAD DECERTIFIED THE MACHINE,
22 THAT'S CORRECT.

23 Q. AND SO IN THAT EVENT, PHILADELPHIA COULD NOT
24 HAVE USED THE XL SYSTEM LAST NOVEMBER, CORRECT?

25 A. IF THE SECRETARY DECERTIFIED THE MACHINE, THE

1 COUNTY COULD NOT USE IT.

2 Q. LAST NOVEMBER?

3 A. LAST NOVEMBER.

4 Q. OR THIS APRIL FOR THE PRIMARY?

5 A. ON THIS APRIL.

6 Q. OR THIS NOVEMBER FOR THE GENERAL?

7 A. THAT'S CORRECT.

8 Q. AND IF THE DEPARTMENT DECIDED NOT TO RECERTIFY
9 THE XL, THIS MOTION TO ENFORCE WOULD HAVE BEEN MOOT,
10 CORRECT?

11 MR. ARONCHICK: OBJECTION.

12 THE COURT: SUSTAINED. ALTHOUGH I HAPPEN
13 TO AGREE WITH YOU IT WOULD HAVE BEEN. I DON'T KNOW THAT
14 IT WOULD HAVE BEEN MOOT, BUT A BIG CHUNK OF IT WOULD
15 HAVE BEEN MOOT.

16 BY MR. MAAZEL:

17 Q. AND NOTWITHSTANDING THIS OUTSTANDING PETITION TO
18 REEXAMINE WHICH COULD HAVE RESULTED IN DECERTIFICATION
19 OF THE SYSTEM, YOU DID RECEIVE A MEET AND CONFER LETTER
20 FROM THE PLAINTIFFS ON JULY 29, 2019, IS THAT RIGHT?

21 A. I DON'T RECALL THE EXACT DATE. IF YOU TELL ME
22 WHAT EXHIBIT IT IS, I WILL CONFIRM.

23 Q. SURE. IF YOU COULD LOOK AT JOINT EXHIBIT 43.

24 A. SURE. OKAY.

25 Q. SO 12 DAYS OR 13 DAYS AFTER THE PETITION TO

1 REEXAMINE, PLAINTIFFS SENT YOU A MEET AND CONFER LETTER?

2 A. ON JULY 29TH. AND I WILL JUST TAKE YOUR WORD
3 FOR THIS NINE DAYS AFTER. WE DID RECEIVE A LETTER FROM
4 YOU AND IT WOULD HAVE BEEN NOTICE THAT YOU BELIEVE WE
5 WERE VIOLATING THE AGREEMENT, YES.

6 Q. AND UNDER THE SETTLEMENT AGREEMENT, IT WAS
7 REQUIRED TO GIVE YOU WRITTEN NOTICE OF ANY ALLEGED
8 DEFICIENCIES BEFORE FILING A MOTION TO ENFORCE, CORRECT?

9 A. THAT'S WHAT WE AGREED TO, YES.

10 Q. AND UNDER THE SETTLEMENT AGREEMENT, YOU HAD
11 30 DAYS TO RESPOND IN WRITING TO PLAINTIFFS' ALLEGATION?

12 A. CORRECT.

13 Q. AND SO THAT GAVE YOU UNTIL AUGUST 28, 2019 TO
14 RESPOND UNDER THE SETTLEMENT AGREEMENT?

15 A. THAT'S CORRECT.

16 Q. NOW, YOU RESPONDED -- YOUR FIRST RESPONSE TO
17 THIS MEET AND CONFER LETTER WAS JX 44, YES?

18 A. I HAVE TO LOOK AT IT.

19 Q. SURE.

20 A. AND YOU ARE ASKING IF IT WAS RESPONSE FROM ME?

21 Q. WELL, THERE'S A LETTER HERE FROM KATHLEEN
22 KOTULA -- BY THE WAY, MS. KOTULA WAS YOUR DEPUTY?

23 A. SHE IS MY DEPUTY, YES.

24 Q. OKAY. AND SHE WAS BACK IN AUGUST?

25 A. CORRECT.

1 Q. AND SO MS. KOTULA WROTE AN E-MAIL THAT YOU WERE
2 COPIED ON THAT SAID: COUNSEL, ON BEHALF OF CHIEF
3 COUNSEL TIM GATES, PLEASE SEE THE ATTACHED LETTER
4 SEEKING AN EXTENSION OF TIME TO RESPOND TO PLAINTIFFS'
5 NOTICE OF NONCOMPLIANCE. RIGHT?

6 A. MS. KOTULA DID SEND THIS E-MAIL ON MY BEHALF,
7 YES.

8 Q. AND SO YOUR FIRST RESPONSE TO PLAINTIFFS' MEET
9 AND CONFER LETTER WAS TO SEEK AN EXTENSION?

10 A. THAT'S CORRECT.

11 Q. AND TO SEEK AN EXTENSION BEYOND THE 30 DAYS YOU
12 WERE ENTITLED TO UNDER THE SETTLEMENT AGREEMENT?

13 A. THAT'S CORRECT.

14 Q. AND IN THE LETTER ATTACHED TO THAT E-MAIL IS A
15 LETTER WRITTEN BY YOU?

16 A. THAT'S CORRECT.

17 Q. AND THAT LETTER NOTES THAT THERE WAS A PENDING
18 PETITION FOR REEXAMINATION AND, BY LAW, THE SECRETARY IS
19 REQUIRED TO CONDUCT THE REEXAMINATION IN RESPONSE?

20 A. YES.

21 Q. AND YOU WROTE, QUOTE, PLAINTIFFS' NOTICE OF
22 COMPLIANCE -- I'M SORRY. YOU WROTE, QUOTE, PURSUANT TO
23 THE TERMS OF THE SETTLEMENT AGREEMENT, MY CLIENTS ARE TO
24 PROVIDE A RESPONSE TO PLAINTIFFS' NOTICE OF
25 NONCOMPLIANCE NO LATER THAN AUGUST 28, 2019. GIVEN THAT

1 THE VOTING SYSTEM IS CURRENTLY BEING REEXAMINED, MY
2 CLIENTS ARE SEEKING AN EXTENSION OF 15 DAYS UNTIL
3 SEPTEMBER 12TH? YES?

4 A. THAT'S WHAT IT SAYS, YES.

5 Q. NOW, SO -- JUST SO I UNDERSTAND YOUR THINKING,
6 IS PART OF THE REASON YOU ASKED FOR AN EXTENSION BECAUSE
7 YOU THOUGHT, WE DON'T KNOW WHAT'S GOING TO HAPPEN WITH
8 THE REEXAMINATION, WE MAY NOT RECERTIFY THIS MACHINE
9 ANYWAY?

10 A. REALLY TWO FOLD. ONE, WE HAD A GOOD IDEA WHAT
11 THE RESULT WAS GOING TO BE AT THAT POINT. AND WE WERE
12 FORMULATING A RESPONSE, BUT WE WEREN'T READY TO RESPOND
13 TO YOU JUST YET. WE DID WANT TO SEE THE REPORT.

14 Q. THE REEXAMINATION REPORT?

15 A. CORRECT.

16 Q. NOW, AT ANY POINT IN YOUR CORRESPONDENCE, YOUR
17 RESPONSE TO OUR FIRST NONCOMPLIANCE LETTER, DID YOU
18 WRITE THAT PLAINTIFFS HAD DELAYED SEEKING RELIEF?

19 A. DID I WRITE TO YOU?

20 Q. YES.

21 A. I DON'T -- NO, I DID NOT.

22 Q. DID YOU WRITE THAT ANY -- THAT THE TIMING OF
23 PLAINTIFFS' MEET AND CONFER LETTER WOULD CAUSE ANYONE
24 ANY PREJUDICE?

25 A. THAT WASN'T PART OF A CONVERSATION THAT WE HAD,

1 NO.

2 Q. OKAY. DID YOU EVER WRITE THAT TIME WAS OF THE
3 ESSENCE TO FILE A MOTION?

4 A. NO.

5 Q. DID YOU SAY ANYTHING ABOUT WHAT PHILADELPHIA WAS
6 DOING OR THAT -- DID YOU WRITE ANYTHING ABOUT
7 PHILADELPHIA AT ALL?

8 A. NO, I DID NOT.

9 Q. DID YOU WRITE THAT THERE WAS ANY HURRY AT ALL TO
10 RESOLVE THIS ISSUE?

11 A. I DID NOT.

12 Q. INSTEAD, YOU ASKED FOR AN EXTENSION?

13 A. I DID. BECAUSE, AGAIN, WE WANTED TO SEE THE
14 REPORT SO WE COULD MAKE SURE THAT OUR RESPONSE WAS
15 CONSISTENT WITH THE REEXAMINATION REPORT.

16 Q. AND IN RESPONSE TO YOUR REQUEST FOR EXTENSION,
17 THE PLAINTIFFS GRANTED IT TO YOU?

18 A. YES.

19 Q. WHICH I AM SURE YOU APPRECIATED.

20 A. I DID. THANK YOU.

21 Q. AND DO YOU RECALL THAT IN LATE AUGUST YOU HAD A
22 MEET AND CONFER CALL WITH PLAINTIFFS' COUNSEL?

23 A. I REMEMBER HAVING A CALL. I'M NOT SURE EXACTLY
24 WHEN THAT WAS. WE HAD A FEW CALLS, I BELIEVE.

25 Q. WELL, DO YOU REMEMBER AT LEAST ON ONE OF THE

1 MEET AND CONFER CALLS THAT PLAINTIFFS' COUNSEL ASKED YOU
2 WHETHER THE BARCODE WAS ACTUALLY COUNTED AS THE VOTE?

3 MR. ARONCHICK: OBJECTION.

4 THE COURT: OVERRULED.

5 THE WITNESS: I DO, YES.

6 BY MR. MAAZEL:

7 Q. AND YOUR RESPONSE WAS YES, THE BARCODE IS
8 COUNTED AS A VOTE?

9 A. I PROBABLY SAID SOMETHING ALONG THOSE LINES. I
10 DON'T REMEMBER EXACTLY WHAT I SAID.

11 Q. BUT THAT IS THE TRUTH, THE BARCODE IS COUNTED AS
12 THE VOTE BY THE MACHINE?

13 A. WELL, THE CONVERSATION WAS ABOUT TABULATION AND
14 WHAT IS TABULATED WITH THE MACHINE. AND THE BARCODE IS
15 WHAT THE MACHINE USES TO TABULATE THE RESULT.

16 Q. AND DO YOU REMEMBER THAT PLAINTIFFS' COUNSEL
17 ALSO ASKED YOU JUST ABOUT PENNSYLVANIA'S OVERALL
18 COMPLIANCE WITH THE SETTLEMENT AGREEMENT, WHAT WAS
19 HAPPENING IN THE VARIOUS COUNTIES? DO YOU REMEMBER
20 THAT?

21 A. YES, I DO.

22 Q. AND EITHER IN THAT CALL, OR IN ANY CALL, DID YOU
23 SUGGEST TO THE PLAINTIFFS THAT THE PLAINTIFFS HAD
24 DELAYED OR THAT TIME WAS OF THE ESSENCE OR THAT THIS WAS
25 CALLING PREJUDICE TO ANYONE, IS THAT CORRECT?

1 A. I DON'T RECALL HAVING THAT CONVERSATION WITH
2 YOU, NO.

3 THE COURT: MR. MAAZEL, WHEN YOU ARE
4 TALKING ABOUT PLAINTIFFS' COUNSEL, YOU ARE TALKING ABOUT
5 YOURSELF?

6 MR. MAAZEL: AMONG OTHERS, YOUR HONOR.

7 THE COURT: WERE YOU SPEAKING WITH TWO OR
8 THREE LAWYERS? WERE YOU SPEAKING -- WHO WERE YOU
9 SPEAKING WITH?

10 THE WITNESS: YOUR HONOR, GENERALLY
11 DURING TELEPHONE CONVERSATIONS WITH PLAINTIFFS' COUNSEL,
12 I HANDLED MOST OF THE CONVERSATION FROM OUR PERSPECTIVE,
13 AND MR. MAAZEL HANDLED THE CONVERSATION FROM THEIR
14 PERSPECTIVE.

15 THE COURT: MY -- YOU ARE PERFECTLY
16 ENTITLED TO ASK LEADING QUESTIONS, BUT YOU'RE BASICALLY
17 SAYING, DIDN'T I SAY THIS, DIDN'T I SAY THAT, YOU NEVER
18 TOLD ME X, YOU NEVER TOLD ME Y. DO YOU SEE THE CORNER
19 YOU ARE PAINTING YOURSELF IN WITH THIS? FAIR WARNING,
20 IF I HAVEN'T GIVEN IT TO YOU BEFORE.

21 BY MR. MAAZEL:

22 Q. NOW, IF YOU LOOK AT JX 46.

23 A. SURE. OKAY.

24 Q. DO YOU SEE ON THE FIRST PAGE AN E-MAIL DATED
25 SEPTEMBER 10, 2019 FROM MYSELF TO MS. KOTULA, COPYING

1 YOU?

2 A. THE FIRST E-MAIL THAT I SEE HERE IS AN E-MAIL
3 FROM MS. KOTULA TO YOU, COPYING ALI FRICK, DOUG LIEB,
4 ME, MYSELF, AND SUE ANN UNGER.

5 Q. I'M SORRY. BUT IF YOU LOOK AT THE E-MAIL IN THE
6 MIDDLE OF THE PAGE, YOU SEE THERE'S AN E-MAIL FROM OUR
7 SIDE SEPTEMBER 10TH AT 10:01 A.M.?

8 A. I DO SEE THAT, YES.

9 Q. AND I'M SAYING --

10 THE COURT: I'M SORRY.

11 THE WITNESS: I WAS JUST MENTIONING WHO
12 THE FOLKS THAT ARE COPIED THERE. IT WAS TO KATHLEEN
13 KOTULA DIRECTLY AND COPIED TO A WHOLE BUNCH OF FOLKS,
14 INCLUDING MYSELF.

15 BY MR. MAAZEL:

16 Q. AND THE E-MAIL SAID, QUOTE, I WAS INFORMED BY A
17 REPORTER THAT THE DEPARTMENT REEXAMINED THE ES&S SYSTEM
18 AND REAPPROVED IT. CAN YOU GIVE US MORE INFORMATION ON
19 THAT?

20 DO YOU SEE THAT?

21 A. I DO SEE THAT, YES.

22 Q. AND WAS IT, IN FACT, TRUE THAT SOMETIME BEFORE
23 SEPTEMBER 10 THE DEPARTMENT HAD REEXAMINED AND
24 RECERTIFIED THE XL?

25 A. I DON'T REMEMBER THE EXACT DATES ON THAT, BUT

1 THAT SOUNDS ABOUT RIGHT.

2 Q. AND THEN IN RESPONSE TO MY E-MAIL, MS. KOTULA
3 PROVIDED A LINK TO THAT REEXAMINATION REPORT, RIGHT?

4 A. SHE DID, YES.

5 Q. AND THEN IF YOU TURN TO JX 47.

6 A. OKAY.

7 Q. IS THIS -- THIS IS A SEPTEMBER 12, 2019 E-MAIL
8 FROM YOU AS PART OF THE MEET AND CONFER PROCESS, RIGHT?

9 A. THAT'S OUR RESPONSE TO YOU, YES.

10 Q. AND THIS IS YOUR FORMAL RESPONSE TO PLAINTIFFS'
11 MEET AND CONFER LETTER FROM JULY?

12 A. YES, IT WAS.

13 Q. AND IT'S YOUR FIRST FORMAL RESPONSE, CORRECT?

14 A. IT WAS, YES.

15 Q. AND, AGAIN, IN YOUR LETTER HERE IN
16 SEPTEMBER 12TH, YOU NEVER SAID ANYTHING ABOUT DELAY OR
17 PREJUDICE OR LACHES OR TIMING OF ESSENCE OR ANYTHING
18 LIKE THAT, CORRECT?

19 A. I DID NOT.

20 Q. AND THEN ON OCTOBER 1ST YOU RECEIVED ANOTHER
21 LETTER FROM PLAINTIFFS' COUNSEL --

22 A. OKAY.

23 Q. -- WHICH IS JX 48, YES?

24 A. I SEE THAT HERE, YES.

25 Q. AND IT DISCUSSED THE ISSUE OF

1 VOTER-VERIFIABILITY AND DISCUSSED THE ISSUE OF THE
2 DEFINITION OF PAPER BALLOTS, AMONG OTHER ISSUES, YES?

3 A. THAT AMONG -- IT SAYS OTHER THINGS AS WELL, BUT
4 YES.

5 Q. AND THEN IF YOU LOOK AT JX 49, THIS WAS YOUR
6 FORMAL RESPONSE, WHICH IS OCTOBER 30, 2019, YES?

7 A. YES.

8 Q. SO YOU TOOK A FULL 29 DAYS TO RESPOND TO THIS
9 MEET AND CONFER LETTER?

10 A. I WILL HAVE TO DO THE MATH HERE. SO YOUR LETTER
11 WAS SENT ON OCTOBER 1ST, 2019, AND OUR RESPONSE WAS SENT
12 ON OCTOBER 30, 2019. SO, YES, THAT APPEARS TO BE
13 ACCURATE.

14 Q. OKAY. AND NOT TO BELABOR THE POINT, BUT, AGAIN,
15 IN THIS LETTER YOU SAY NOTHING ABOUT DELAY OR PREJUDICE
16 OR ANYTHING LIKE THAT, YES?

17 A. THAT'S CORRECT.

18 Q. DO YOU REMEMBER AFTER THIS LETTER THERE WAS --
19 WELL, WITHDRAWN.

20 DID YOU UNDERSTAND THAT THE PURPOSE OF
21 THIS MEET AND CONFER WAS FOR THE PARTIES TO TRY TO WORK
22 THIS ISSUE OUT IN GOOD FAITH?

23 A. WORK OUT THIS ISSUE OR WORK OUT -- THIS
24 PARTICULAR ISSUE OR GENERAL ISSUES. THE IDEA OF THE
25 MEET AND CONFER WAS TO RESOLVE DISPUTES OUTSIDE OF

1 ACTUALLY GOING TO COURT AND ASKING FOR RESOLUTION.

2 Q. AND SO DID YOU WELCOME THIS BACK AND FORTH
3 EXCHANGE OF LETTERS AND CONVERSATIONS AS OPPOSED TO
4 HAVING THE PLAINTIFF RUN TO COURT?

5 A. IT WAS CERTAINLY PART OF THE AGREEMENT, YES.

6 Q. AND AS PART OF THIS BACK AND FORTH, THIS MEET
7 AND CONFER, WERE YOU TRYING TO PERSUADE THE PLAINTIFFS'
8 SIDE OF YOUR POSITION?

9 A. CERTAINLY.

10 Q. AND WERE THE PLAINTIFFS TRYING TO PERSUADE YOU
11 OF THEIR ISSUE?

12 A. YES.

13 Q. AFTER THIS OCTOBER 30TH LETTER, DO YOU REMEMBER
14 A CALL IN WHICH YOU PARTICIPATED, ALONG WITH A NUMBER OF
15 THE FOLKS ON YOUR SIDE, AND I PARTICIPATED ALONG WITH
16 PEOPLE ON MY SIDE?

17 A. I DO REMEMBER A CALL AFTER THIS LETTER WAS SENT,
18 YES.

19 Q. AND DO YOU REMEMBER THAT PLAINTIFFS' COUNSEL,
20 I.E. MYSELF, HAD QUESTIONS ABOUT WHAT HAPPENED TO THE
21 PIECE OF PAPER AFTER THE VOTER VERIFIED?

22 MR. ARONCHICK: OBJECTION.

23 THE COURT: OVERRULED.

24 THE WITNESS: I DO REMEMBER THAT YOU
25 ASKED ME A QUESTION. AND THE QUESTION REALLY, I WILL

1 JUST KIND OF SUMMARIZE, HAD TO DO WITH THE PATH OF THE
2 PAPER BALLOT THAT WAS GOING THROUGH THE XL.

3 BY MR. MAAZEL:

4 Q. AND WHETHER A PRINTHEAD -- WHETHER THE PAPER
5 WENT PAST A PRINTHEAD BEFORE IT WAS COUNTED?

6 A. YES, YOU DID ASK ME THAT QUESTION.

7 Q. AND DID YOU SAY IN RESPONSE TO THAT THAT YOU
8 WOULD LOOK FURTHER INTO THE ISSUE AND LET US KNOW?

9 A. I DID SAY THAT, YES.

10 Q. AND IF YOU CAN TURN TO JX 50.

11 A. OKAY.

12 Q. AND IF YOU TURN TO THE LAST PAGE, THAT'S A
13 NOVEMBER 8TH E-MAIL FROM YOU TO ME?

14 A. YES.

15 Q. AND HERE YOU PROVIDED MORE INFORMATION ABOUT --
16 IN THE END OF THE FIRST PARAGRAPH, YOU PROVIDE
17 INFORMATION ABOUT WHAT HAPPENS TO THE PIECE OF PAPER
18 WITH RESPECT TO THE PRINTHEAD, YES?

19 A. I DID SAY, DURING OUR CALL EARLIER THIS WEEK,
20 YOU ASKED A QUESTION REGARDING CONTACT BETWEEN THE
21 PRINTER HEAD AND THE VOTE SUMMARY CARD. OUR RESPONSE IS
22 AS FOLLOWS.

23 DO YOU WANT ME TO READ THE RESPONSE?

24 THE COURT: I CAN READ IT.

25 THE WITNESS: OKAY.

1 BY MR. MAAZEL:

2 Q. AND ESSENTIALLY WHAT YOU SAID IS THAT THE PAPER
3 WOULD GO PAST THE PRINthead BEFORE IT WAS COUNTED,
4 RIGHT?

5 A. LET ME READ WHAT I SAID HERE. THAT DOES NOT
6 SOUND LIKE WHAT YOU SAID I SAID. I THINK IT'S JUST
7 EASIER FOR ME TO READ IT.

8 I MEAN, WE HAD OUR EXAMINERS EXAMINE THIS
9 ISSUE. AND THEY SAID THAT WHEN THEY OBSERVED IT, THE
10 ONE TIME THAT THE PRINTER HAD MADE CONTACT WITH THE VOTE
11 SUMMARY CARD IS AFTER THEY MADE THAT -- THE VOTER MADE
12 THE SELECTIONS. AND THEN THE PRINTER HAD LIFTS AND THEN
13 IT'S DEPOSITED IN THE BALLOT BOX.

14 Q. AND JUST SO WE UNDERSTAND SORT OF HOW THIS
15 WORKS. THERE ARE BALLOT-MARKING DEVICES THAT PRODUCE A
16 PIECE OF PAPER THAT THE VOTER THEN HAS IN HIS OR HER
17 HAND, YES?

18 A. THERE ARE BMDS THAT DO THAT, YES.

19 Q. WHERE THE VOTER CAN THEN TAKE THAT PIECE OF
20 PAPER AND STICK IT IN THE SCANNER, IT'S A SEPARATE
21 DEVICE, AND THE VOTE IS COUNTED?

22 A. WE DO HAVE MACHINES THAT DO THAT.

23 Q. FOR THIS PARTICULAR SYSTEM, THE XL, FIRST, I
24 GATHER THAT THE PIECE OF PAPER NEVER ENTERS THE VOTER'S
25 HANDS, IT STAYS BEHIND A PIECE OF GLASS?

1 A. THAT'S CORRECT. UNLESS THEY DON'T AGREE WITH
2 THE SELECTIONS THAT THEY ARE ATTEMPTING TO VERIFY, THEN
3 THEY CAN GET THE BALLOT BACK.

4 Q. AND THEN AFTER THE VOTER LOOKS AT HIS OR HER
5 SELECTIONS AND AT LEAST IN THEORY VERIFIES THEM, THE
6 PAPER THEN GOES PAST THE PRINthead ON THE WAY THROUGH
7 THE MACHINE, YES?

8 A. THE PRINthead LIFTS AND THEN THE BALLOT IS THEN
9 DEPOSITED IN THE BALLOT BOX OF THAT MACHINE.

10 Q. THE PRINthead LIFTS, BUT IT GOES PAST THE
11 PRINthead IS MY POINT?

12 A. IT DOES, YES.

13 Q. ALL RIGHT. IN THIS LETTER, JX 50, YOU AGAIN
14 REFER TO --

15 THE COURT: IF I MAY INTERRUPT. AND YOU
16 MAY NOT KNOW THE ANSWER TO THIS, BUT I GATHER THAT SOME
17 COUNTIES, THERE ARE 67 COUNTIES IN THE COMMONWEALTH,
18 SOME COUNTIES HAVE THE SYSTEM THAT MR. MAAZEL DESCRIBED
19 A SECOND AGO, WHICH IS THE VOTER HOLDS THE PAPER BALLOT
20 IN HIS OR HER HAND, IS THAT RIGHT? THAT SUBSEQUENTLY
21 GETS SCANNED?

22 THE WITNESS: THERE ARE MANY SYSTEMS THAT
23 DO THAT, YOUR HONOR. SO, YES, THERE ARE SYSTEMS OUT
24 THERE WHERE THE VOTER CAN HANDLE -- KATHLEEN KOTULA IS
25 IN THE AUDIENCE, SHE IS PROBABLY THE BETTER EXPERT ON

1 THIS, BUT, YES, THERE ARE MACHINES THAT --

2 THE COURT: MY UNDERSTANDING IS, SAY, IN
3 MONTGOMERY COUNTY, THE -- AND IF I AM WRONG, THIS IS ALL
4 ANECDOTAL, IF I AM WRONG, TELL ME. AND IF YOU DON'T
5 KNOW, THAT'S OKAY, TOO. THE VOTER MARKS HIS OR HER
6 BALLOT AND THEN BRINGS IT OVER TO SOMEBODY AND IT GETS
7 SCANNED. THAT'S THE LAST TIME THE VOTER LOOKS --
8 PRESUMABLY LOOKS AT HIS OR HER OWN BALLOT AND HANDS IT
9 OVER?

10 THE WITNESS: I AM NOT SURE IF THAT'S THE
11 SYSTEM THEY USE IN MONTGOMERY COUNTY, YOUR HONOR. THERE
12 ARE SYSTEMS THAT DO THAT, YES.

13 THE COURT: IT WOULD APPEAR TO ME THAT
14 THAT WOULD TAKE A LOT LONGER TO DO. EACH VOTE WOULD
15 TAKE A LOT LONGER TO CAST AND TABULATE THAN THE XL
16 SYSTEM.

17 THE WITNESS: CERTAINLY, YOUR HONOR.

18 THE COURT: MIGHT THAT BE A REASON WHY A
19 BIG CITY WITH LOTS AND LOTS OF VOTERS WOULD WANT TO HAVE
20 THE XL SYSTEM?

21 THE WITNESS: YOUR HONOR, I THINK THAT'S
22 ONE OF MANY CONSIDERATIONS I THINK PHILADELPHIA
23 CONSIDERED. I KNOW WE HAVE WITNESSES HERE FROM
24 PHILADELPHIA. I THINK THAT HAS BEEN --

25 THE COURT: AND THEY HAVE ALL HEARD THE

1 QUESTION SO THEY WILL ALL BE PREPARED TO ANSWER IT IF I
2 ASK IT AGAIN, BUT I WAS JUST WONDERING.

3 THE WITNESS: YES, YOUR HONOR. AND,
4 AGAIN, PHILADELPHIA CAN SPEAK FOR THEMSELVES. THAT'S
5 ONE BIG INITIATIVE, IF YOU CARE, FOR THE GOVERNOR'S
6 LIEN. PART OF THE LIEN PROCESS IS MAKING SURE THAT YOU
7 ELIMINATE UNNECESSARY STEPS, TO MAKE IT AS EFFICIENT A
8 PROCESS AS YOU CAN. THAT WOULD SEEM TO MAKE SENSE IN
9 THIS CONTEXT. ALSO FROM A SECURITY PERSPECTIVE NOT
10 HAVING FOLKS HANDLE BALLOTS IS SOMETHING THAT I WOULD
11 THINK A LARGE COUNTY WOULD CONSIDER AS WELL, BUT, AGAIN,
12 PHILADELPHIA IS THE EXPERT ON THIS.

13 THE COURT: OKAY.

14 BY MR. MAAZEL:

15 Q. YOU KNOW, SIR, THAT IN NEW YORK CITY -- NEW YORK
16 CITY IS A LOT BIGGER THAN PHILADELPHIA, RIGHT?

17 A. I COULDN'T TELL YOU THAT. I GUESS I WILL TAKE
18 YOUR WORD FOR IT.

19 Q. AND NEW YORK CITY --

20 MR. ARONCHICK: YOUR HONOR, OBJECTION,
21 YOUR HONOR, TO NEW YORK CITY QUESTIONS.

22 THE COURT: IT'S OKAY. HE IS FROM NEW
23 YORK. HE IS FEELING HOMESICK.

24 GO AHEAD.

25 BY MR. MAAZEL:

1 Q. YOU KNOW THAT IN NEW YORK CITY THAT'S EXACTLY
2 THE SYSTEM THAT IS USED. THERE IS A -- VOTERS FILL OUT
3 OVALS IN ONE SPOT AND THEN THEY GO TO A SCANNER IN
4 ANOTHER SPOT. ARE YOU AWARE OF THAT?

5 A. NO, I AM NOT AWARE OF THAT.

6 THE COURT: I'M FROM NEW YORK AND I
7 WASN'T AWARE OF IT EITHER. THANK YOU.

8 THE WITNESS: I HAVE BEEN THERE TO NEW
9 YORK, I LOVE IT, BUT I DON'T KNOW WHAT VOTING SYSTEMS
10 THEY ARE USING IN NEW YORK.

11 MR. MAAZEL: AT LEAST NEW YORKERS CAN
12 FEEL GOOD ABOUT IT TODAY.

13 BY MR. MAAZEL:

14 Q. DID YOU SPEAK WITH MS. BOOCKVAR WHILE YOU WERE
15 PREPARING FOR THESE MEET AND CONFER CONVERSATIONS?

16 THE COURT: ARE WE GETTING INTO A
17 PRIVILEGED AREA HERE?

18 MR. MAAZEL: SECRETARY BOOCKVAR THIS
19 MORNING WAIVED THE PRIVILEGE WHEN SHE DESCRIBED WHAT SHE
20 DIRECTED MS. UNGER TO DO AS PART OF THE SETTLEMENT
21 DISCUSSIONS. SHE SAID, I DIRECTED HER TO DO THIS, TO DO
22 THAT.

23 THE COURT: WELL, THIS ISN'T MS. UNGER,
24 THIS IS MR. GATES. AND I DON'T KNOW THAT THEY -- IF
25 THERE IS A WAIVER, I BELIEVE IT'S MY OBLIGATION TO

1 CONSTRUE IT NARROWLY. AND YOU MAY FIND THAT TO BE TRUE
2 WHEN MR. ARONCHICK CROSS-EXAMINES YOU, IF HE DOES. WHY
3 DON'T YOU FINISH YOUR QUESTION.

4 MR. MAAZEL: WELL, I AM NOT GOING TO ASK
5 THE QUESTION, YOUR HONOR. WE DON'T BELIEVE THE
6 PRIVILEGE HAS BEEN WAIVED, BUT --

7 THE COURT: I HAVE NOT RULED. I JUST
8 ASKED THE QUESTION.

9 MR. MAAZEL: OKAY.

10 BY MR. MAAZEL:

11 Q. DID YOU SPEAK WITH MS. KOTULA -- I'M SORRY.

12 DID YOU SPEAK WITH SECRETARY BOOCKVAR --
13 LET ME ASK IT THIS WAY.

14 WITHOUT ASKING THE SUBSTANCE OF ANY
15 CONVERSATIONS, DID YOU HAVE CONVERSATIONS WITH SECRETARY
16 BOOCKVAR DURING THE MEET AND CONFER PROCESS?

17 A. I HAVE CONVERSATIONS WITH SECRETARY BOOCKVAR
18 EVERY DAY, MULTIPLE TIMES PER DAY. SO, YES, THE ANSWER
19 IS PROBABLY YES ON THAT ONE.

20 Q. SO DID YOU HAVE DISCUSSIONS WITH SECRETARY
21 BOOCKVAR IN AND AROUND THE TIME THAT YOU WROTE YOUR MEET
22 AND CONFER LETTERS?

23 MR. ARONCHICK: OBJECTION.

24 THE COURT: SUSTAINED.

25 DO YOU EVER ACT IN YOUR OFFICIAL CAPACITY

1 WITHOUT YOUR CLIENT'S APPROVAL?

2 THE WITNESS: I DON'T, YOUR HONOR.

3 THE COURT: DOES THAT ANSWER YOUR
4 QUESTION, MORE OR LESS?

5 MR. MAAZEL: I THINK THAT CAPTURES THE
6 SUBSTANTIVE, YOUR HONOR.

7 BY MR. MAAZEL:

8 Q. IN RESPONSE TO YOUR NOVEMBER 8TH E-MAIL, YOU
9 RECEIVED AN E-MAIL NOVEMBER 10TH FROM MYSELF, YES?
10 THAT'S STILL JX 50.

11 A. WHAT WAS THE DATE OF YOUR E-MAIL?

12 Q. NOVEMBER 10TH.

13 A. YES, I DO SEE THAT HERE.

14 Q. AND THERE HAD BEEN A GENERAL ELECTION ON
15 NOVEMBER 5, 2019, CORRECT?

16 A. YES.

17 Q. AND IN THIS PARTICULAR E-MAIL, I WROTE YOU:
18 THANKS, TIM. ARE YOU WILLING TO RECONSIDER YOUR
19 POSITION IN LIGHT OF THE ES&S DISASTER AT NORTHAMPTON
20 COUNTY LAST TUESDAY? THE SYSTEM IS NOT WORTHY OF
21 PENNSYLVANIA VOTERS OR OUR SETTLEMENT AGREEMENT.

22 DID YOU RECEIVE THAT E-MAIL?

23 MR. ARONCHICK: OBJECTION.

24 THE COURT: IF THERE IS AN OBJECTION, IT
25 IS OVERRULED.

1 THE WITNESS: YES, I DO REMEMBER

2 RECEIVING IT. YES.

3 BY MR. MAAZEL:

4 Q. AND THEN ON NOVEMBER 13TH, YOU WROTE: OUR
5 POSITION REMAINS, THE ES&S EXPRESSVOTE XL FULLY COMPLIES
6 WITH SECTION 2 OF THE SETTLEMENT AGREEMENT, YES?

7 A. YES, THAT'S WHAT I WROTE.

8 Q. AND THEN IF YOU TURN TO STIP NUMBER 83, IT WAS
9 NOVEMBER 26TH WHEN THE PLAINTIFF MOVED TO ENFORCE THE
10 AGREEMENT, YES?

11 A. YES, THAT'S WHAT WE STIPULATED TO.

12 Q. SO ABOUT TWO WEEKS AFTER OUR LAST MEET AND
13 CONFER EXCHANGE?

14 A. THAT'S ABOUT RIGHT, YES.

15 Q. YOU TESTIFIED A COUPLE OF TIMES THAT YOU
16 INFORMED THE PLAINTIFFS IN ADVANCE OF THE SETTLEMENT
17 CONFERENCE THAT YOU WERE HEADING IN A DIRECTION THAT YOU
18 THOUGHT THE PLAINTIFFS WOULD BE HAPPY WITH?

19 A. YES.

20 Q. AND YOU WERE NOT THERE YET, YOU WERE STILL
21 HEADING THERE, RIGHT?

22 A. IT DEPENDS ON WHICH FRONT YOU ARE TALKING ABOUT.

23 Q. ON THE PAPER BALLOT FRONT. YOU WERE STILL
24 HEADING THERE, RIGHT?

25 A. ON THE PAPER BALLOT FRONT, YES, BECAUSE WE STILL

1 HAD TO CERTIFY MACHINES. YES.

2 Q. AM I CORRECT THAT THE VERY FIRST TIME THE
3 DEFENDANTS EVER SAID ANYTHING ABOUT DELAY OR PREJUDICE
4 WAS AFTER PLAINTIFFS FILED THE MOTION TO ENFORCE THE
5 AGREEMENT?

6 A. NO. ACTUALLY, I THINK THAT I WAS -- I WASN'T
7 SURPRISED THAT I HEARD FROM YOU IN JULY OF 2019, BUT I
8 WAS SURPRISED THAT I HAD NOT HEARD FROM YOU BEFORE THEN.
9 SO WE DIDN'T SAY TO YOU THAT WE WERE CONCERNED ABOUT A
10 DELAY, BUT THAT WAS CERTAINLY SOMETHING I WAS THINKING
11 ABOUT.

12 Q. WELL, MY QUESTION IS, IS THE VERY FIRST TIME YOU
13 ACTUALLY SAID -- YOU OR ANYONE ON THE DEFENSE SIDE SAID
14 THAT YOU WERE CONCERNED ABOUT DELAY OR LACHES OR
15 PREJUDICE, THE FIRST TIME ANY OF YOU ACTUALLY SAID ANY
16 OF THAT WAS AFTER WE FILED A MOTION TO ENFORCE, CORRECT?

17 A. YEAH, THAT'S CORRECT. THAT WAS PART OF OUR
18 ARGUMENT.

19 Q. AND THAT WAS AFTER YOU HIRED NEW COUNSEL TO
20 REPRESENT THE DEFENDANTS, YES?

21 A. I THINK IT WAS AFTER I TRIED TO CONVINCE YOU OF
22 OUR POSITION FIRST, AND YOU TRIED TO CONVINCE ME OF
23 YOURS, YES.

24 MR. MAAZEL: NO FURTHER QUESTIONS, YOUR
25 HONOR.

1

CROSS EXAMINATION

2

BY MR. ARONCHICK:

3

Q. MR. GATES, LET ME TAKE YOU BACK TO THE BEGINNING
OF THE SETTLEMENT DISCUSSIONS IN SEPTEMBER 2018. WHAT
WAS THE IMPETUS, WHAT WAS THE GOAL THAT THE DEPARTMENT
HAD IN INITIATING THOSE SETTLEMENT DISCUSSIONS?

4

5

6

7

A. THE GOAL WAS TO SETTLE THE CASE, GIVEN THE
FRAMEWORK AND THE POSITION THAT THE SECRETARY HAD TAKEN
AND THE ACTING SECRETARY AND MS. BOOCKVAR HAD TAKEN.
AND THE IDEA WAS, IF WE CAN SETTLE THE CASE FOR THE
INITIATIVE AND THE THINGS THAT WE WERE ALREADY DOING,
WHY NOT? WHY NOT TRY TO SETTLE THE CASE.

8

9

10

11

12

13

Q. AND AT THAT POINT, PART OF THE INITIATIVE WAS
PHASING OUT DRE'S, CORRECT?

14

15

A. THAT WAS ONE OF THE MOST IMPORTANT, YES.

16

Q. AND WAS THE STEIN LITIGATION ABOUT GETTING RID
OF DRE'S?

17

18

A. PRECISELY ABOUT THAT.

19

Q. HAD THE JUDGE IN THE STEIN LITIGATION JUST
ENTERED A DISCOVERY ORDER IN SEPTEMBER -- A DISCOVERY
SCHEDULE IN DECEMBER -- SEPTEMBER OF 2018?

20

21

22

A. HE DID, YES.

23

Q. DID THE COURT ALSO SCHEDULE A RULE 16

24

CONFERENCE?

25

A. YES.

1 Q. DID YOU APPROACH THE PLAINTIFFS ABOUT SETTLEMENT
2 AT OR AROUND THAT TIME?

3 A. I THINK IT WAS ABOUT AROUND THAT TIME WE ALSO
4 HAD THE CONFERENCE WITH THE JUDGE WHERE WE WERE TALKING
5 ABOUT IT AS WELL.

6 Q. WHO WAS THE TEAM, YOUR NEGOTIATING TEAM AT THAT
7 POINT?

8 A. SO IT WAS THE -- SUE ANN UNGER WAS OUR ATTORNEY,
9 BUT I WAS THE PRIMARY NEGOTIATOR. WE HAD -- JOHN
10 HARTZELL WAS ANOTHER ONE OF MY DEPUTIES. AND THEN WE
11 ADDED KATHY BOOCKVAR LATER, TO THE ACTUAL NEGOTIATING
12 TEAM. WE HAD CERTAINLY CONSULTED WITH HER. SO SHE WAS
13 PART OF THE TEAM, TOO.

14 Q. AND WHAT WAS SUE ANN UNGER'S ROLE?

15 A. IN THE BEGINNING, SUE ANN UNGER WAS THE
16 INTERMEDIARY BETWEEN PLAINTIFFS' COUNSEL, MR. MAAZEL AND
17 MYSELF, WHO WAS THE INTERMEDIARY BETWEEN THE CLIENTS AND
18 MS. UNGER.

19 Q. AND AT THE OUTSET, WHAT DID YOU ASK OR DID YOU
20 PROVIDE TO MR. MAAZEL IN ORDER TO START THE SETTLEMENT
21 NEGOTIATIONS?

22 A. IN ORDER TO START THE NEGOTIATIONS, AGAIN, WE,
23 AS A TEAM THOUGHT IT WAS IMPORTANT TO EDUCATE MR. MAAZEL
24 AND HIS CLIENTS ABOUT THE PATH THAT WE WERE ON, BECAUSE
25 WE WERE CONVINCED THAT THEY WOULD BE PLEASED WITH THE

1 DIRECTION THAT WE WERE HEADED, MAINLY NO DRE'S AND
2 MACHINES THAT HAD PAPER THAT COULD BE VERIFIED.

3 Q. AND I'M NOT GOING TO GO OVER -- YOU WERE HERE
4 FOR SECRETARY BOOCKVAR'S TESTIMONY ABOUT THE SUE ANN
5 UNGER E-MAIL OF SEPTEMBER 28TH THIS MORNING?

6 A. I WAS HERE FOR THAT, YES.

7 Q. AND THE MATERIALS THAT WERE PRODUCED OR PROVIDED
8 TO MR. MAAZEL?

9 A. YES, I WAS HERE FOR THAT.

10 Q. WERE YOU INVOLVED IN DIRECTING THAT THOSE
11 MATERIALS BE PROVIDED?

12 A. I WAS, YES.

13 Q. AND YOU'RE FAMILIAR WITH WHAT WAS BEING PROVIDED
14 TO MR. MAAZEL?

15 A. I WAS, YES.

16 Q. ALL RIGHT. SHORTLY AFTER THAT, OR AT OR AROUND
17 THAT TIME, DID YOU HAVE AN INITIAL TELEPHONE
18 CONVERSATION WITH MR. MAAZEL?

19 A. YES.

20 Q. AND DO YOU RECALL WHEN THAT WAS?

21 A. SOMETIME IN OCTOBER, I BELIEVE, MAYBE OCTOBER
22 5TH.

23 Q. BEFORE THEN -- WOULD YOU TURN TO JOINT EXHIBIT
24 17.

25 A. SURE. AND YOU SAID JOINT EXHIBIT 17?

1 Q. I'M SORRY, YES. LET ME GET THE NUMBER RIGHT, JX

2 11.

3 DO YOU RECALL GETTING THIS E-MAIL ON OR
4 AROUND -- A COPY OF THIS E-MAIL ON OR AROUND
5 SEPTEMBER 17TH?

6 A. YES.

7 Q. AROUND THE 19TH, I GUESS IT IS, SEPTEMBER 19TH
8 IT IS?

9 A. YES. I DO, YES.

10 Q. ALL RIGHT. AND WHAT IS MR. MAAZEL ASKING YOU
11 FOR?

12 A. HE IS ASKING US IF WE CAN PROVIDE HIM WITH A
13 LIST OF MACHINES THAT ARE UNDER CONSIDERATION. AND HE
14 IS ASKING FOR IT IN THE NEXT COUPLE OF WEEKS.

15 Q. AND TURN TO JX 12, EXHIBIT 12.

16 A. OKAY.

17 Q. IS THAT THE LIST OF MACHINES THAT WERE UNDER
18 CONSIDERATION AT THE TIME THAT WAS SENT TO MR. MAAZEL?

19 A. YES. AS OF SEPTEMBER 21, 2018.

20 Q. RIGHT. AND YOU WERE -- YOU HEARD THE TESTIMONY
21 THIS MORNING FROM MS. BOOCKVAR ABOUT THE EVS 6000/6021
22 NOTATION ON THIS DOCUMENT?

23 A. I DID HEAR THAT, YES.

24 Q. AND FROM YOUR KNOWLEDGE, DID THE EVS 6000/6021
25 INCLUDE AS PART OF THE SUITE THE XL?

1 A. IT DID, YES.

2 Q. THE EXPRESSVOTE XL?

3 A. YES, IT DID.

4 Q. AND YOU WERE AWARE ALSO THAT ON PAGE 3, THAT
5 VERY SYSTEM WAS BEING TESTED A COUPLE OF DAYS LATER,
6 SEPTEMBER 24TH AND SEPTEMBER 28TH?

7 MR. MAAZEL: OBJECTION TO LEADING, YOUR
8 HONOR.

9 THE COURT: IT'S RIGHT THERE IN FRONT OF
10 HIM.

11 WERE YOU AWARE OF THAT?

12 THE WITNESS: I WAS AWARE.

13 BY MR. ARONCHICK:

14 Q. NOW, YOU DISCUSSED SUBSEQUENTLY, AFTER THIS
15 MATERIAL WAS SENT TO MR. MAAZEL ON THE 28TH, ON
16 OCTOBER 1ST, THAT YOU HAD A TELEPHONE CALL WITH HIM.
17 DID YOU RECALL THE DATE OF THAT PHONE CALL?

18 A. YES. AND I THINK IT WAS REFERENCED IN THIS
19 PREVIOUS E-MAIL WE WERE PREPARING FOR A CALL ON OCTOBER
20 5TH.

21 Q. DID, IN FACT, YOU HAVE A CALL WITH MR. MAAZEL ON
22 OCTOBER 5TH?

23 A. YES.

24 Q. CAN YOU RECALL THE SUBSTANCE OF THAT TELEPHONE
25 CALL?

1 A. YES, I DO RECALL THE SUBSTANCE OF THE CALL.

2 Q. OKAY.

3 A. DO YOU WANT ME TO GO INTO THAT?

4 Q. TELL ME WHAT YOU RECALL.

5 A. SO WHAT I RECALL ABOUT THAT TELEPHONE
6 CONVERSATION IS WE THEN HAD DISCUSSIONS ABOUT THE
7 MACHINES THAT WERE CERTIFYING HERE IN PENNSYLVANIA AND
8 THE TYPES THAT THEY WERE. WE DIDN'T GET INTO THE
9 SPECIFICS ABOUT THE INTIMATE DETAILS OF THE MACHINES,
10 BUT THEY WEREN'T DRE'S. MADE IT CLEAR THAT WE WERE
11 MOVING AWAY FROM THE DIRECTION THAT THE COMMONWEALTH HAD
12 BEEN WITH THE PAPERLESS MACHINES AND NOW WE WERE WORKING
13 TOWARDS MACHINES THAT PROVIDED PAPER AS EVIDENCED BY THE
14 LIST OF MACHINES THAT WE PROVIDED, AND THAT THOSE
15 MACHINES WERE ON THE PATH OF CERTIFICATION IN
16 PENNSYLVANIA.

17 Q. ALL RIGHT. AND DO YOU RECALL ANY RESPONSE FROM
18 MR. MAAZEL?

19 A. I THINK INITIALLY HE WAS VERY PLEASED THAT --
20 AND I THINK HE SAID SO, THAT HE WAS VERY PLEASED WITH
21 THE DIRECTION THAT WE WERE MOVING IN PENNSYLVANIA.

22 Q. AND DID HE SAY ANYTHING ABOUT THE LIST OF
23 MACHINES THAT YOU HAD SENT OVER?

24 A. I DON'T RECALL IF IT WAS HERE OR LATER, BUT
25 THERE WAS A POINT WHERE I KNOW THAT HE WANTED HIS

1 EXPERT, WHO WAS MR. HALDERMAN, TO TAKE A LOOK AT THE
2 MACHINES AND WE AGREED. SO WE PROVIDED THE LIST. AND
3 MR. HALDERMAN CAN REVIEW THE MACHINES AND DO WHAT WE
4 PHRASED AS A -- WHAT HE PHRASED AS A LEMON CHECK, TO
5 DETERMINE WHETHER OR NOT THESE MACHINES WERE THE TYPES
6 OF MACHINES THAT THEY WERE OKAY WITH. I DON'T KNOW IF
7 THAT WAS THAT CONVERSATION OR IT WAS A SUBSEQUENT
8 CONVERSATION, BUT THAT WAS PART OF A CONVERSATION.

9 Q. AND WHAT WAS -- WHAT DID YOU UNDERSTAND HE MEANT
10 BY A LEMON CHECK?

11 A. NO DRE'S, IS REALLY WHAT I THOUGHT WE WERE
12 TALKING ABOUT. AGAIN, THE CONVERSATIONS THAT WE HAD
13 BEEN HAVING WAS REALLY MOVING FROM DRE'S. THERE WAS AN
14 EXPRESS CONCERN ABOUT CERTAIN TYPES OF DRE'S AND THEY
15 WERE MAKING SURE THAT WE WERE MOVING AWAY FROM THOSE.
16 SO THE IDEA WAS TO HAVE THEIR EXPERT PROVIDE THAT LEMON
17 CHECK TO TELL US WHETHER OR NOT HE WAS OKAY WITH THOSE
18 MACHINES.

19 Q. DID YOU UNDERSTAND THAT MR. HALDERMAN WAS THE
20 EXPERT HE WAS TALKING ABOUT?

21 A. YES, I DID.

22 Q. AND THAT MR. HALDERMAN WAS GOING TO BE REVIEWING
23 THE LIST OF MACHINES THAT YOU HAD PROVIDED?

24 A. YES.

25 Q. IN THIS CONVERSATION ABOUT A LEMON CHECK, WAS

1 THERE ANY CONVERSATION FROM MR. MAAZEL THAT HE WAS --
2 THAT LEMONS WOULD INCLUDE BALLOT-MARKING DEVICES?

3 A. NEVER.

4 Q. WAS THERE ANY CONVERSATION FROM MR. MAAZEL THAT
5 LEMONS WOULD INCLUDE MACHINES THAT PRODUCED PAPER
6 RECORDS OF VOTES THAT DIDN'T LOOK LIKE CHOICE BALLOTS?

7 A. NO.

8 Q. OTHER THAN MR. MAAZEL'S COMMENT TO YOU THAT
9 LEMONS WOULD BE DRE MACHINES, WAS THERE ANYTHING ELSE HE
10 SAID THAT MIGHT QUALIFY AS A LEMON? SOMETHING THAT MR.
11 HALDERMAN OR HE WERE NOT GOING TO AGREE TO?

12 A. NOT AT THAT TIME. AT SOME POINT, THERE WAS A
13 DISCUSSION ABOUT -- AGAIN, I MENTIONED THIS EARLIER, A
14 DRE WITH THE VVPAT. I WOULDN'T CLASSIFY IT AS A LEMON
15 BECAUSE IT WASN'T PART OF THIS CONVERSATION, BUT I WOULD
16 HAVE TAKEN THAT TO BE A LEMON, FROM THAT PERSPECTIVE.

17 Q. THAT'S A DRE.

18 A. CORRECT.

19 Q. I ASKED YOU ABOUT ANY KINDS OF MACHINES OTHER
20 THAN DRE'S ON THIS PHONE CALL WITH MR. MAAZEL.

21 A. NO.

22 Q. COULD YOU TURN TO JOINT EXHIBIT NUMBER 20?

23 THE COURT: 20?

24 MR. ARONCHICK: 20.

25 THE WITNESS: OKAY.

1 BY MR. ARONCHICK:

2 Q. HAD THERE BEEN SET UP -- THIS IS AN E-MAIL DATED
3 OCTOBER 9, 2018. HAD THERE ALREADY BEEN SET UP A PHONE
4 CALL WITH MR. MAAZEL FOR THE AFTERNOON OF OCTOBER 9,
5 2018?

6 A. YES.

7 Q. AND WAS THAT PHONE CALL FOLLOWING UP ON THE
8 PHONE CALL ABOUT THE LEMON CHECKS?

9 A. YES, IT WAS.

10 Q. AND WAS THAT ONE OF THE PURPOSES OF THE PHONE
11 CALL?

12 A. YES.

13 Q. TO FIND OUT WHAT MR. HALDERMAN THOUGHT ABOUT THE
14 MACHINES UNDER CONSIDERATION?

15 A. YES. I THINK IT WAS IMPORTANT TO BOTH PARTIES,
16 AT LEAST MR. MAAZEL AND MYSELF, TO FIND OUT WHAT MR.
17 HALDERMAN THOUGHT OF THESE MACHINES.

18 Q. ALL RIGHT. SO --

19 A. DR. HALDERMAN, I'M SORRY. SORRY ABOUT THAT.

20 Q. BEFORE THE PHONE CALL, JOINT EXHIBIT 20, IS THIS
21 THE E-MAIL YOU RECEIVED FROM MR. MAAZEL BEFORE THAT
22 PHONE CALL?

23 A. YES.

24 Q. CAN WE START THE PHONE CALL -- WELL, I MEAN THE
25 E-MAIL, IT'S ADDRESSED TO SUE UNGER. DID SUE UNGER

1 PROVIDE WITH YOU THIS E-MAIL?

2 A. THAT SAME DAY.

3 Q. AND IT SAYS, IT STARTS: HERE IS SOME FEEDBACK
4 BEFORE OUR CALL THIS AFTERNOON.

5 DO YOU SEE THAT?

6 A. YES, I DO.

7 Q. ALL RIGHT. CAN YOU GO ON AND READ WHAT MR.
8 MAAZEL IS PROVIDING YOU AS FEEDBACK?

9 A. SURE. SO THE FIRST PART IS FROM MR. MAAZEL.
10 AND HE SAYS: THE BIG POINT IS THAT THE LIST OF MODELS
11 IN THE PA SYSTEMS AND ELECTRONIC POLL BOOK REPORT, WHICH
12 IS THE REPORT WE JUST TALKED ABOUT.

13 Q. THAT'S THE SEPTEMBER 21, 2018 REPORT THAT YOU
14 HAD PREVIOUSLY PROVIDED?

15 A. YES. THE LIST OF VOTING SYSTEMS THAT HE ASKED
16 FOR.

17 INCLUDES A SUITE OF ELECTION SYSTEMS,
18 SOME OF WHICH DON'T USE PAPER BALLOTS AND SOME OF WHICH
19 DO. FOR EXAMPLE, I AM TOLD THE HART INTERCIVIC VERITY
20 VOTING INCLUDES THE VERITY TOUCH, A PAPERLESS DRE
21 SYSTEM. SO I THINK WE AND YOU, IN PARENTHESES, NEED A
22 MORE GRANULAR LIST OF WHICH PARTICULAR MACHINES/
23 ELECTION SYSTEMS ARE BEING PROPOSED FOR CERTIFICATION.

24 Q. AND WHAT DID YOU UNDERSTAND MR. MAAZEL TO BE
25 SAYING AT THIS POINT?

1 A. THAT THEY WERE CONCERNED THAT WE WERE LOOKING AT
2 CERTAIN TYPES OF DRE SYSTEMS.

3 Q. AND IN ASKING YOU FOR A GRANULAR LIST OF WHICH
4 SYSTEM, WHAT DID YOU UNDERSTAND THAT HE WANTED?

5 A. AGAIN, WANTED TO MAKE SURE THAT WE WEREN'T
6 ENTERTAINING DRE PAPERLESS SYSTEMS.

7 Q. LET'S GO ON AND SEE WHAT ELSE HE PROVIDED YOU TO
8 SEE IF THIS SUPPORTS YOUR UNDERSTANDING.

9 A. SURE.

10 Q. WHAT FOLLOWS FROM THIS?

11 A. SO THE -- WHAT FOLLOWS IS, IT LOOKS LIKE AN
12 E-MAIL FROM DR. HALDERMAN FORWARDED TO US FROM MR.
13 MAAZEL. AND IT SAYS, AGAIN, ASSUMING THIS IS DR.
14 HALDERMAN: I REVIEWED THE VOTING SYSTEMS THAT PA IS
15 CONSIDERING AND I DON'T DISAPPROVE OF ANY OF THEM IN
16 THEIR ENTIRETY.

17 Q. ALL RIGHT. NOW, THESE ARE, AS YOU'RE
18 UNDERSTANDING, THE VOTING SYSTEMS THAT YOU HAD PROVIDED
19 ON THE SEPTEMBER 21 VOTING REPORT?

20 A. THE FIVE SYSTEMS, INCLUDING THE ES&S SYSTEMS.

21 Q. OKAY. GO AHEAD.

22 A. WHERE WAS I HERE?

23 ALL OF THEM, IN PARENTHESES, THAT USE
24 PAPER BALLOTS, CLOSE PARENTHESES, CAN BE USED WITH
25 REASONABLE SECURITY IF IMPLEMENTED WITH VOTER-VERIFIABLE

1 PAPER BALLOTS AND ROBUST MANUAL AUDITS. THAT SAID,
2 THERE ARE FEATURES OF EACH OF THESE SYSTEMS THAT CAN
3 RENDER THEM UNSAFE IF ACTIVATED. PERHAPS YOU CAN URGE
4 PA TO CERTIFY THEM WITH RESTRICTIONS THAT PROVIDE
5 THESE -- PROHIBIT THESE DANGEROUS FUNCTIONS.

6 Q. ALL RIGHT. AND LET'S -- FOR THE MOMENT, LET'S
7 GO TO THE PARAGRAPH THAT IS DIRECTED TO THE MACHINE IN
8 THIS CASE, THE ES&S PARAGRAPH. CAN YOU READ THAT?

9 A. YES.

10 MR. MAAZEL: CAN I JUST OBJECT TO THAT
11 CHARACTERIZATION OF COUNSEL.

12 THE COURT: OVERRULED.

13 THE WITNESS: SO THE SECOND BULLET HERE
14 REFERENCES THE ES&S EXPRESSVOTE. AND IT SAYS: THE ES&S
15 EXPRESSVOTE MACHINES CAN WORK AS TRADITIONAL
16 BALLOT-MARKING DEVICES, BUT IT'S ALSO POSSIBLE TO
17 CONFIGURE THEM IN WAYS THAT DEFEAT THE PURPOSE OF THE
18 PAPER TRAIL. I HAVE SEEN THEM SET UP TO PRINT THE
19 BALLOT, BUT NOT SHOW IT TO THE VOTE -- I AM GUESSING IT
20 SAYS VOTER HERE -- VOTER, ET AL., PARENTHESES, THE
21 MACHINE JUST SCANS IT INTERNALLY AND STORES IT IN A
22 BALLOT BOX, CLOSE PARENTHESES. THIS MEANS THERE'S A
23 PAPER, BUT IT'S NOT VOTER-VERIFIED, SO IT'S OF NO USE IN
24 AN AUDIT.

25 ANDREW APPEL RECENTLY WROTE ABOUT ANOTHER

1 CONFIGURATION OF THE EXPRESSVOTE IN WHICH IT ASKS VOTERS
2 WHETHER THEY WANT TO VERIFY THEIR BALLOTS BEFORE
3 PRINTING THEM AND ONLY ALLOWS THE VOTER TO INSPECT THE
4 PAPER IF THEY SAY YES. AS ANDREW EXPLAINS IN THIS --
5 LOOKS LIKE A BLOG, FREEDOM TO TINKER -- THIS ALSO
6 DEFEATS THE VALUE OF AN AUDIT, SINCE MALWARE COULD BE
7 PROGRAMMED TO CHEAT, ONLY IF THE VOTER OPTS NOT TO SEE
8 THE PAPER. PA SHOULD REQUIRE THESE MACHINES -- THE
9 MACHINES TO BE CONFIGURED SO THAT EVERY VOTER HAS AN
10 OPPORTUNITY TO SEE THEIR COMPLETED BALLOT AFTER IT HAS
11 BEEN PRINTED.

12 BY MR. ARONCHICK:

13 Q. COMPLETED AFTER IT HAS BEEN -- DID YOU LOOK AT
14 THE FREEDOM TO TINKER ARTICLE THAT MR. -- THAT MR.
15 HALDERMAN IS REFERENCING IN THIS E-MAIL?

16 A. I DID, YES.

17 Q. AND IS THAT JOINT EXHIBIT 21?

18 A. YES, IT IS.

19 Q. WOULD YOU GO TO THE TOP OF THE SECOND PAGE TO --
20 AND READ WHAT IT IS -- THE MACHINE THAT MR. APPEL IS
21 ADDRESSING IN THIS ARTICLE? WHAT DOES IT SAY?

22 A. ARE YOU TALKING ABOUT THE SENTENCE THAT STARTS
23 WITH UNION COUNTY?

24 Q. YES. TOP OF THE SECOND PAGE.

25 A. UNION COUNTY, NEW JERSEY AND THE ENTIRE STATE OF

1 DELAWARE ARE, PARENTHESES, TO THE BEST OF MY KNOWLEDGE,
2 CLOSE PARENTHESES, IN THE PROCESS OF PURCHASING
3 EXPRESSVOTE XL MACHINES, WHICH ARE LIKE THE TOUCHSCREENS
4 SHOWN IN THE VIDEO, BUT WITH A MUCH LARGER SCREEN THAT
5 CAN SHOW THE WHOLE BALLOT AT ONCE. NEW JERSEY AND
6 DELAWARE SHOULD NOT BUY THESE MACHINES. IF THEY INSIST
7 ON BUYING THEM, THEY MUST DISABLE THE PERMISSION TO
8 CHEAT FEATURE.

9 Q. WAS THERE ANY DOUBT TO YOU WHEN YOU READ THIS
10 THAT MR. HALDERMAN WAS REFERRING TO THE VERY MACHINE
11 THAT IS AT ISSUE IN THIS CASE, THE EXPRESSVOTE XL?

12 A. NO, I THINK THAT'S THE POINT THAT HE WAS TRYING
13 TO MAKE.

14 Q. AND WHAT IS THE FEATURE THAT MR. HALDERMAN IS
15 SUGGESTING OR ASKING THAT THE COMMONWEALTH BE URGED TO
16 REQUIRE IF THEY ARE GOING TO CERTIFY THE XL MACHINE?

17 A. I INTERPRET IT AS THE AUTO CAST FUNCTION, I
18 THINK WE DID, THERE'S A FUNCTION WITH THE XL THAT, IF
19 ENABLED, AUTOMATICALLY CASTS THE BALLOTS WITHOUT THE
20 VOTER HAVING AN OPPORTUNITY TO REVIEW THE BALLOT.
21 THAT'S NOT A CERTIFIED FUNCTION OF THE EXPRESSVOTE XL.

22 Q. THAT FEATURE WAS, IN FACT, REMOVED?

23 A. YES.

24 Q. AND IS NOT PART OF THE XL SYSTEM?

25 A. IT IS NOT.

1 Q. IS THERE ANY OTHER OBJECTION TO THE XL SYSTEM
2 THAT MR. HALDERMAN IS RAISING IN THIS PARAGRAPH ON
3 OCTOBER 9TH?

4 A. IN JOINT EXHIBIT 20.

5 Q. IN JOINT EXHIBIT 20.

6 A. NO.

7 THE COURT: SO THIS WAS SOMETHING THE
8 COMMONWEALTH HAD DECIDED TO REMOVE BEFORE DR. HALDERMAN
9 OPINED ON IT?

10 THE WITNESS: I THINK IT WAS NOT QUITE
11 SIMULTANEOUS, BUT WE WERE BOTH THINKING THE SAME THING,
12 WHICH GOES ALONG WITH, I THINK WE WERE BOTH HEADING IN
13 THE SAME DIRECTION. IT WAS ONE OF THOSE PLACES WHERE WE
14 WERE ON THE SAME PATH, YOUR HONOR.

15 THE COURT: NO, NO. I -- YOU DIDN'T DO
16 IT IN RESPONSE TO HIS E-MAIL. IT WAS ALREADY -- IT HAD
17 ALREADY BEEN REMOVED. WHEN YOU SAW THIS E-MAIL, THAT
18 FEATURE HAD ALREADY BEEN -- HAD NOT BEEN CERTIFIED.

19 THE WITNESS: THE MACHINE ITSELF WASN'T
20 CERTIFIED AT THIS POINT.

21 THE COURT: BUT WHAT YOU WERE EXAMINING
22 FOR CERTIFICATION DID NOT HAVE THE FEATURE THAT DR.
23 HALDERMAN COMPLAINED ABOUT.

24 THE WITNESS: I DON'T KNOW THE ANSWER TO
25 THAT, YOUR HONOR.

1 THE COURT: OKAY.

2 THE WITNESS: I DON'T RECALL THAT IT DID.
3 BUT, AGAIN, IT WAS AROUND THE SAME TIME WE WERE
4 CONSIDERING --

5 THE COURT: IF YOU DID IT IN RESPONSE TO
6 DR. HALDERMAN'S ADMONITION, I WOULD LIKE TO KNOW IT. IF
7 YOU DID IT INDEPENDENTLY, I WOULD LIKE TO KNOW THAT.

8 THE WITNESS: WE CERTAINLY PASSED THIS
9 INFORMATION ON TO OUR CLIENT, WHO WAS GOING TO THE
10 CERTIFICATION PROCESS OF THE MACHINE, WHO HAD NOT YET
11 PROVIDED THE CERTIFICATION REPORT. AND THE
12 FUNCTIONALITY OF THAT MACHINE WOULD HAVE BEEN DETAILED
13 IN THE REPORT THAT WE ISSUED ON NOVEMBER 30TH, WHICH
14 WOULD HAVE BEEN SUBSEQUENT TO DISCUSSIONS THAT WE WOULD
15 HAVE HAD AS A TEAM THAT WOULD HAVE CONSIDERED THESE
16 COMMENTS. AND THAT WOULD HAVE CONSIDERED OTHER ARTICLES
17 AND OTHER THINGS THAT WE HAD SEEN ON THE AUTO CAST
18 FUNCTION.

19 BY MR. ARONCHICK:

20 Q. LET ME ASK IT THIS WAY: AFTER YOU RECEIVED THIS
21 E-MAIL, DID YOU HAVE A CONVERSATION THAT AFTERNOON WITH
22 MR. MAAZEL?

23 A. YES, WE DID.

24 Q. DO YOU RECALL IF YOU ASSURED HIM THAT ES&S
25 EXPRESSVOTE XL WILL NOT HAVE THAT AUTO CAST FUNCTION?

1 MR. MAAZEL: OBJECTION, LEADING.

2 THE COURT: DO YOU RECALL -- WHAT, IF
3 ANYTHING, DO YOU RECALL ABOUT WHAT YOU SAID WITH RESPECT
4 TO WHETHER THE EXPRESSVOTE XL MACHINE WOULD HAVE THAT
5 PERMISSION TO CHEAT FEATURE?

6 THE WITNESS: IT WAS KIND OF A
7 COMBINATION DISCUSSION, YOUR HONOR. WE HAD TALKED, I
8 THINK TWO QUICK CALLS ON THE 5TH AND THEN ANOTHER ONE ON
9 THE 9TH, BUT WE WERE TALKING ABOUT THE DRE'S, WE WERE
10 TALKING ABOUT THIS E-MAIL. AND AFTER I CONFERRED WITH
11 THE FOLKS THAT WERE CERTIFYING, I WAS ASSURED THAT NOT
12 ONLY WERE THEY CONSIDERING THIS, BUT THEY WERE NOT --
13 THIS COMMENT IN THIS DISCUSSION, THAT THEY WERE NOT
14 GOING TO CERTIFY THAT FUNCTION. SO I DID RELAY THAT TO
15 MR. MAAZEL ON THE TELEPHONE CALL OF OCTOBER 9TH.

16 BY MR. ARONCHICK:

17 Q. ON THAT OCTOBER 9TH CALL, DID YOU HAVE A
18 DISCUSSION WITH MR. MAAZEL ABOUT WHETHER THERE WOULD BE
19 ANY DRE'S THAT WOULD BE CERTIFIED OR PART OF THE
20 ELECTION SUITES THAT WERE BEING CERTIFIED IN THE
21 COMMONWEALTH?

22 A. AND THAT WAS OUR THEME MOVING UP TO OCTOBER 9TH,
23 JUST AS -- PROVIDING ASSURANCES THAT THE DRE MACHINES
24 WERE NOT GOING TO BE SYSTEMS THAT WE WERE GOING TO
25 CERTIFY HERE IN PENNSYLVANIA. I THINK THAT'S ABOUT THE

1 TIME THAT MAYBE THE DRE, THE VVPAT CAME UP. BUT, AGAIN,
2 EVEN DRE'S WITH VVPATS -- I THINK SECRETARY BOOCKVAR
3 EXPLAINED WHAT THE DRE WITH THE VVPAT IS, OR PROVIDED
4 THE DETAILS OF IT, BUT EVEN THAT MACHINE WOULD NOT BE
5 CONSIDERED A MACHINE THAT WE SHOULD BE CERTIFYING THAT
6 WOULD COMPLY WITH THE AGREEMENT.

7 Q. ALL RIGHT. ON THAT CALL IN THE AFTERNOON ON
8 OCTOBER 9TH, FOLLOWING THIS E-MAIL, DID MR. MAAZEL SAY
9 TO YOU ANYTHING ABOUT HIS REFERENCES OR DR. HALDERMAN'S
10 REFERENCES TO PAPER BALLOTS, BALLOTS, COMPLETED BALLOTS,
11 PRINTED BALLOTS, BALLOT BOXES, ALL THE WORDS THAT ARE ON
12 THIS E-MAIL, THAT THEY DO NOT INCLUDE THE KIND OF PAPER
13 THAT THE BALLOT-MARKING DEVICE MACHINES, PARTICULARLY
14 THE XL, WAS PRINTING?

15 A. NO. IN FACT, MY IMPRESSION WAS THAT THEY WERE
16 OKAY WITH ALL OF THOSE MACHINES, EXPLICITLY THE XL,
17 BECAUSE IT WAS PART OF THE SUITE OF MACHINES THAT WE HAD
18 LAID OUT IN THAT SUMMARY REPORT TO THEM AND THAT DR.
19 HALDERMAN HAD TAKEN A LOOK AT.

20 Q. IN FACT, GOING BACK TO THE ARTICLE THAT WAS SENT
21 TO YOU ON JOINT EXHIBIT 21, MR. APPEL'S ARTICLE.

22 A. OKAY.

23 Q. THE ARTICLE THAT MR. HALDERMAN WANTED YOU TO
24 READ.

25 A. YES.

1 Q. CAN YOU GO TO THE FIRST PAGE AND LOOK AT THE
2 PARAGRAPH IN THE MIDDLE WHICH STARTS WITH: THIS VIDEO.

3 A. OKAY.

4 Q. ARE THERE -- DO YOU SEE REFERENCES FROM MR.
5 APPEL THERE CALLING THE PAPER BALLOTS OR -- THAT PAPER
6 THAT GOES INTO BALLOT BOXES?

7 A. IT SAYS THAT THIS VIDEO SHOWS A DEMONSTRATION OF
8 THE EXPRESSVOTE ALL ON ONE TOUCHSCREEN PURCHASED BY
9 JOHNSON COUNTY, KANSAS. THE VOTER BRINGS A BLANK BALLOT
10 TO THE MACHINE, INSERTS IT INTO A SLOT, CHOOSES THE
11 CANDIDATES, AND THE MACHINE PRINTS THOSE CHOICES ONTO
12 THE BLANK BALLOT AND SPITS IT OUT FOR THE VOTER TO
13 INSPECT.

14 Q. ALL RIGHT. SO NOT ONLY -- WHEN YOU SAW THIS,
15 NOT ONLY MR. MAAZEL AND DR. HALDERMAN BUT MR. APPEL, OR
16 DR. APPEL, ARE USING THE WORDS BALLOT, PAPER BALLOT,
17 BALLOT, PRINTED BALLOT, VARIOUS WORDS, IN THEIR OWN
18 COMMUNICATIONS TO YOU?

19 MR. MAAZEL: OBJECTION.

20 BY MR. ARONCHICK:

21 Q. IS THAT TRUE?

22 A. THAT IS TRUE. IN OUR DIFFERENT COMMUNICATIONS
23 AND IN THE VERBAL COMMUNICATIONS, AGAIN, I THINK WE WERE
24 TALKING ABOUT THE SAME THINGS. FROM OUR PERSPECTIVE, WE
25 WERE TALKING ABOUT PIECES OF PAPER, WHETHER YOU CALL

1 THEM BALLOTS, WHETHER YOU CALL THEM SUMMARY CARDS, THE
2 PIECES OF PAPER THAT WERE PRODUCED BY THESE MACHINES
3 THAT WE WERE CERTIFYING AND THAT WE HAD ASKED THEM TO
4 TAKE A LOOK AT.

5 Q. FROM THIS POINT ON OCTOBER 9TH FORWARD UNTIL THE
6 SIGNING OF THE SETTLEMENT AGREEMENT, HAD YOU HEARD FROM
7 MR. MAAZEL OR DR. HALDERMAN OR ANYONE ON THE PLAINTIFFS'
8 TEAM THAT THEY HAD ANY OTHER THOUGHTS ABOUT THE USE OF
9 THE WORD PAPER BALLOT OR BALLOT OR PAPER, VERIFIABLE
10 PAPER, THAT THEY HAD ANY OTHER THOUGHTS THAT CAUSED YOU
11 TO RECONSIDER THE SETTLEMENT AGREEMENT?

12 A. NO.

13 Q. DID YOU HEAR ANYTHING FROM THEM ABOUT THEIR USE
14 OF THE WORD PAPER, PAPER BALLOT, BALLOTS AND THE LIKE
15 THAT SAID TO YOU YOU NEEDED TO ELIMINATE FROM YOUR
16 INITIATIVE THE BALLOT-MARKING DEVICES THAT WERE UNDER
17 REVIEW AND SOME OF THEM CERTIFIED?

18 A. NO. AND, AGAIN, I TOOK IT AS THEY BLESSED THEM
19 WITH THEIR LEMON CHECK AND TOLD US THAT THEY WEREN'T
20 LEMONS.

21 Q. ALL RIGHT. AND, AGAIN, THE LEMON CHECK WAS
22 DIRECTED TO WHAT?

23 A. THE LEMON CHECK WAS DIRECTED TO THE LIST OF
24 MACHINES THAT WE PROVIDED THEM IN ADVANCE OF THE
25 CONVERSATION WE HAD ON THE TELEPHONE AND IN ADVANCE OF

1 THE DRAFTING OF THE TERMS BY PLAINTIFFS' COUNSEL IN THE
2 TERM SHEET.

3 Q. AND THE LEMONS BEING?

4 A. THE LEMONS BEING THE DRE'S.

5 Q. THE DRE'S.

6 A. EVEN A DRE WITH A VVPAT, WHICH IS STILL A DRE.

7 Q. RIGHT. NOW FOLLOWING THE OCTOBER 9TH
8 CONVERSATION WITH MR. MAAZEL, ON THE PORTION OF THE
9 SETTLEMENT DISCUSSIONS THAT DEAL WITH THE MACHINES, NOT
10 THE PORTION ABOUT THE AUDITS OR SOME OF THE OTHER
11 ADDITIONS LATER ON ABOUT CONSENT AND THINGS LIKE THAT.
12 BUT THE PORTION THAT DEALS WITH MACHINES, DID YOU
13 BELIEVE YOU HAD AN UNDERSTANDING AND AN AGREEMENT ON HOW
14 THOSE MACHINES THAT WERE IN YOUR INITIATIVE WOULD BE
15 DEFINED IN THE SETTLEMENT AGREEMENT?

16 A. I DID, YES.

17 Q. AND DID YOU -- DID MR. MAAZEL OFFER OR DID YOU
18 SUGGEST THAT HE THEN WRITE UP A TERM SHEET THAT CAPTURED
19 AT LEAST THAT PART OF YOUR UNDERSTANDING?

20 A. I BELIEVE THEY OFFERED.

21 Q. THEY OFFERED.

22 AND DID THEY, IN FACT, WRITE UP A TERM
23 SHEET?

24 A. THEY DID, YES.

25 Q. AND LET'S GO TO JOINT EXHIBIT 24.

1 A. OKAY.

2 Q. SECTION 2 IN THIS TERM SHEET PROVIDED BY MR.
3 MAAZEL, SECTION 2. IS THAT THE LANGUAGE -- I THINK YOU
4 SAID WITH THE EXCEPTION OF A LITTLE CHANGE TO C, TO
5 SECTION C, WHICH WE CAN ADDRESS -- BUT IS THAT THE
6 LANGUAGE THAT REFLECTED THE AGREEMENT YOU BELIEVED YOU
7 HAD WITH MR. MAAZEL ABOUT HOW THE MACHINES WOULD BE
8 REFERRED TO IN THE SETTLEMENT AGREEMENT?

9 A. YES.

10 Q. AND DID -- LET'S SEE WHAT -- LET'S BE CLEAR
11 HERE. WHAT CHANGED IN SECTION C? LET'S GO TO THE
12 EXHIBIT 25, WHICH IS ALSO FROM MR. MAAZEL, THAT FOLLOWED
13 THE SETTLEMENT CONFERENCE IN FRONT OF MAGISTRATE RICE
14 THE NEXT DAY, OCTOBER 12TH. DO YOU SEE THAT?

15 A. I DO.

16 Q. ALL RIGHT. FOCUSING ON WHAT IS NOW PARAGRAPH 1
17 IN THAT SETTLEMENT. IN OTHER WORDS, IT WAS RENUMBERED,
18 IT'S PARAGRAPH 1.

19 DO YOU SEE THAT?

20 A. I DO.

21 Q. ALL RIGHT. WHAT IS THE CHANGE THAT WAS MADE TO
22 SUBSECTION C?

23 A. SO THE ORIGINAL SAYS: THEY ARE CAPABLE OF
24 SUPPORTING THE ROBUST PRECERTIFICATION AUDIT PROCESS
25 DESCRIBED IN PARAGRAPH NUMBER 6 BELOW, INCLUDING

1 BALLOT-LEVEL COMPARISON AUDITS.

2 THE VERSION -- THE SUBSEQUENT VERSION
3 READS: THEY ARE CAPABLE OF SUPPORTING A ROBUST
4 PRECERTIFICATION AUDITING PROCESS.

5 Q. ALL RIGHT. SO THE DESCRIPTION OF THE AUDITING
6 PROCESS IN PARAGRAPH 6, THAT DESCRIPTION WAS REMOVED AND
7 THIS BECAME THE DEFINITION OF THE MACHINES THAT WERE
8 PART OF THIS SETTLEMENT AGREEMENT?

9 A. THAT'S CORRECT.

10 Q. ALL RIGHT. AND LOOKING AT TERM SHEET -- JOINT
11 EXHIBIT 25, THAT VERSION OF THE TERM SHEET. AND THEN
12 LOOKING AHEAD TO THE FINAL SETTLEMENT, JOINT EXHIBIT 30,
13 WHERE THE PARAGRAPH CONCERNING THESE MACHINES IS NOW
14 PARAGRAPH 2, IS THAT CORRECT?

15 A. IT IS, YES.

16 Q. ALL RIGHT. IS THERE ANY CHANGE WHATSOEVER FROM
17 WHAT MR. MAAZEL PROVIDED ON OCTOBER 12TH FOLLOWING THE
18 SETTLEMENT CONFERENCE CONCERNING THESE MACHINES INTO THE
19 FINAL SETTLEMENT AGREEMENT THAT WAS SIGNED BY THE
20 PARTIES?

21 A. NO.

22 Q. WAS -- DO YOU RECALL IN THE DRAFTING PROCESS,
23 WAS MR. MAAZEL'S DRAFT DESCRIPTION THAT WAS AGREED TO
24 JUST LIFTED AND PUT INTO THE FINAL SETTLEMENT AGREEMENT?

25 A. IT WAS, YES.

1 Q. ALL RIGHT. NOW, THE -- DOES THE -- LET'S LOOK
2 AT EXHIBIT 57. DO YOU RECOGNIZE THAT, JOINT EXHIBIT 57?

3 A. OKAY.

4 Q. WHAT IS THAT?

5 A. THAT'S A COPY OF THE PIECE OF PAPER THAT THE XL
6 MACHINE PRINTS FOR THE VOTER TO VERIFY.

7 Q. DOES THAT PIECE OF PAPER -- LET'S CALL IT THAT,
8 EXHIBIT 57. DOES THAT MEET THE DEFINITION IN THE
9 SETTLEMENT AGREEMENT WHICH IS NOW IN EXHIBIT 30, JOINT
10 EXHIBIT 30, WHICH IS SECTION 2?

11 A. YES, IT DOES.

12 Q. CAN YOU EXPLAIN HOW YOU SEE IT?

13 A. SURE. SO PARAGRAPH 2A, MY IDEA OF WHAT THAT IS,
14 IS THE ANTI-DRE PROVISION THAT SAYS THAT THE BALLOT ON
15 WHICH EACH VOTE IS RECORDED IS PAPER.

16 Q. DID YOU SAY THAT'S THE ANTI-DRE?

17 A. THE ANTI-DRE PROVISION. THE BIG DIFFERENCE
18 BETWEEN THE DRE AND THESE MACHINES IS THAT THE DRE
19 REGISTERS AND RECORDS VOTES ELECTRONICALLY. THE
20 DIFFERENCE BETWEEN THESE MACHINES AND THE DRE IS THAT
21 THEY REGISTER ELECTRONICALLY, BUT THEY RECORD ON PAPER.
22 SO THAT'S WHAT THIS PROVISION PROVIDES. THAT'S WHAT
23 THIS DOCUMENT DOES.

24 B, THEY PRODUCE A VOTER-VERIFIABLE RECORD
25 OF EACH VOTE. THERE IS CERTAINLY A PORTION HERE ON THIS

1 PIECE OF PAPER, BALLOT, WHATEVER YOU WANT TO CALL IT,
2 THAT HAS HUMAN READABLE TEXT THAT THE VOTER CAN VERIFY.

3 AND THEN C, CERTAINLY CAPABLE OF
4 SUPPORTING A ROBUST PRECERTIFICATION AUDIT, BECAUSE, IN
5 FACT, WE WENT THROUGH A COUPLE OF AUDITS IN THIS PAST
6 ELECTION, THE TEXT WAS USED FOR AN AUDIT. SO IT'S
7 CERTAINLY CAPABLE OF BEING AUDITED.

8 SO, YES, IT MEETS THE DEFINITION OF
9 PARAGRAPH 2A THROUGH C.

10 Q. AND IN PARAGRAPH 3 OF THE SETTLEMENT AGREEMENT,
11 DID THE LANGUAGE THAT YOU WORKED OUT WITH MR. MAAZEL
12 CHANGE TO HIS DRAFT, THE SECRETARY WILL CONTINUE, DID
13 THAT STAY IN THE FINAL SETTLEMENT AGREEMENT?

14 A. IT DID. AND IT WAS -- AGAIN, I MENTIONED THIS
15 BEFORE, VERY IMPORTANT, BECAUSE THIS IS SOMETHING WE
16 WERE ALREADY DOING. WE BELIEVED THAT WE WERE ON THE
17 PATH. WE BELIEVED THAT MR. MAAZEL AND HIS CLIENTS WERE
18 PLEASED WITH THE PATH AS WELL. THIS IS THE LANGUAGE
19 THAT WE AGREED TO AND THEN WE MOVED ON. WE DIDN'T HAVE
20 ANY CONVERSATIONS ABOUT PARAGRAPH 2 OR PARAGRAPH 3. WE
21 WERE MOVING INTO AUDITS DISCUSSIONS, WE WERE TALKING
22 ABOUT CONSENT AGREEMENTS. WHETHER OR NOT IT WAS OR WAS
23 NOT A CONSENT AGREEMENT, WHETHER OR NOT THIS COURT COULD
24 ENFORCE THE AGREEMENT OR THEY SHOULD, MONEY. WE STARTED
25 TALKING ABOUT OTHER THINGS UNRELATED TO THE MACHINES AND

1 THE TYPES OF PAPER BALLOT, PAPER RECEIPTS, WHATEVER --
2 THEY ARE NOT RECEIPTS, BUT THEY ARE PAPER BALLOTS THAT
3 WERE PRODUCED BY THIS MACHINE.

4 Q. RIGHT. AND IN PARAGRAPH 3, AT THE END, THE
5 WORDS ARE: SO THAT EVERY PENNSYLVANIA VOTER IN 2020
6 USES A VOTER-VERIFIABLE PAPER BALLOT.

7 WHY WERE THOSE WORDS USED THERE?

8 A. I MEAN, IT'S A LITTLE BACKWARDS. BUT I THINK
9 THAT THE POINT OF PARAGRAPH 3 WAS, THIS IS WHAT WE MEAN
10 BY PAPER BALLOT IN THIS AGREEMENT. IT IS 2A, B AND C.
11 AND IT'S NOT FOOTNOTE 3, WHICH IS A VVPAT WITH -- A DRE
12 WITH A VVPAT. SO THIS IS OUR CLEAR ATTEMPT TO DEFINE
13 WHAT WE MEANT IN THIS AGREEMENT BY A PIECE OF PAPER, IN
14 THIS CASE A PAPER BALLOT, SINCE WE USE IT THERE, THAT
15 COMPLIES WITH THE SETTLEMENT AGREEMENT.

16 Q. NOW, WAS THERE ANY DISCUSSION ON OCTOBER 11TH OR
17 THEREAFTER THAT THE DEFINITION OF PAPER BALLOT IN THE
18 ELECTION CODE WAS AN OPERABLE PROVISION OR REQUIRED IN
19 THIS SETTLEMENT AGREEMENT?

20 A. NEVER. AND WE WOULDN'T HAVE HAD THAT
21 CONVERSATION, BECAUSE THIS IS AN ELECTRONIC VOTING
22 SYSTEM -- AGAIN, I MENTIONED IT BEFORE -- THAT REGISTERS
23 VOTES ELECTRONICALLY. THE DEFINITION OF A PAPER BALLOT
24 IN THE ELECTION CODE IS INAPPLICABLE, BECAUSE IT IS NOT
25 REQUIRED OF THIS TYPE OF MACHINE. WHAT WE MEAN BY PAPER

1 BALLOT, MIND YOU, IS WHAT WE PRINT IN THIS PIECE OF
2 PAPER, 2A THROUGH C.

3 Q. "THIS PIECE OF PAPER" MEANING?

4 A. THIS DOCUMENT, THIS SETTLEMENT DOCUMENT.

5 Q. JOINT EXHIBIT 30?

6 A. CORRECT, THE SETTLEMENT DOCUMENT.

7 Q. WHAT YOU PRINTED AS, 2A, B AND C?

8 A. YES. 2A, B AND C, SUMMARIZED IN PARAGRAPH 3.

9 Q. AND THE AUTHORITY TO ADD PAPER RECORDS TO
10 ELECTRONIC VOTING MACHINES, THAT AUTHORITY IS AVAILABLE
11 TO THE SECRETARY?

12 A. CERTAINLY.

13 Q. AND -- AS PART OF WHAT, HER SECURITY PROVISIONS?

14 A. WELL, AGAIN, I WOULD NOT SAY THAT SHE HAS THE
15 AUTHORITY TO CALL IT, YOU KNOW, A PAPER BALLOT OR CALL
16 IT ANYTHING. THIS MACHINE DOES NOT REQUIRE A PAPER
17 BALLOT. BUT IS SHE AUTHORIZED TO ENTER AN AGREEMENT OR
18 AM I AUTHORIZED ON HER BEHALF TO ENTER AN AGREEMENT AND
19 WE DEFINE PAPER BALLOT A CERTAIN WAY? I DO BELIEVE SO,
20 YES.

21 Q. AND THE PROVISIONS THAT THIS DOCUMENT WILL BE
22 GOVERNED BY PENNSYLVANIA LAW, WHAT DID YOU TAKE THAT TO
23 MEAN?

24 A. THAT'S A TYPICAL -- THAT'S A PROVISION THAT WE
25 PUT IN THERE. THAT'S ONE I TYPICALLY PUT IN THE

1 PROBABLY 100 OR SO AGREEMENTS THAT I HAVE ENTERED. BUT
2 THE POINT IS, WE DON'T WANT TO GO TO NEW JERSEY, WE
3 DON'T WANT TO GO TO ANOTHER STATE, WE DON'T WANT TO USE
4 OTHER STATE LAW WHEN WE ARE DETERMINING THE TERMS OF THE
5 CONTRACT AND WHETHER OR NOT -- AND WHERE IT SHOULD BE
6 ENFORCED. THE CONTRACT SHOULD BE ENFORCED IN
7 PENNSYLVANIA, BUT IF THERE IS AN INCONSISTENCY IN
8 PENNSYLVANIA LAW THAT'S APPLICABLE, THEN PENNSYLVANIA
9 LAW GOVERNS.

10 IN THIS CASE, I KNOW MR. MAAZEL TRIED TO
11 TALK ABOUT THE FACT THAT THE ELECTION CODE DEFINES PAPER
12 BALLOT, BUT JUST BECAUSE WE SAY THAT PENNSYLVANIA LAW
13 CONTROLS DOES NOT MEAN THAT IT CONTROLS FOR A
14 DEFINITION, AND IT DOESN'T APPLY TO THIS AGREEMENT.

15 Q. BUT THE PENNSYLVANIA LAW ABOUT INTERPRETING A
16 CONTRACT WOULD APPLY?

17 A. ABSOLUTELY.

18 MR. MAAZEL: OBJECTION TO LEADING.

19 MR. ARONCHICK: I THINK HE JUST SAID IT.

20 THE COURT: I THINK THIS IS KIND OF
21 BELABORING THE OBVIOUS HERE, SO WHY DON'T YOU GO ON.

22 MR. ARONCHICK: OKAY.

23 BY MR. ARONCHICK:

24 Q. AFTER OCTOBER 11TH, I JUST WANT TO BRIEFLY GO
25 OVER WHAT MS. BOOCKVAR TESTIFIED. THERE WAS ANOTHER

1 POLLING LIST OF -- POLLING MACHINE LIST MADE AVAILABLE
2 PUBLICLY?

3 A. YES.

4 Q. AND IS THAT DX M?

5 A. DX.

6 Q. DEFENSE EXHIBIT M?

7 THE COURT: MY PLAINTIFFS' EXHIBIT BINDER
8 HAS NUMBERS.

9 MR. ARONCHICK: YEAH, WE USE LETTERS.

10 THE COURT: OH, IT'S DX.

11 MR. ARONCHICK: DX, YEAH.

12 THE COURT: I THOUGHT YOU SAID PX.

13 SORRY.

14 M AS IN MARY?

15 MR. ARONCHICK: YES.

16 THE COURT: OKAY.

17 BY MR. ARONCHICK:

18 Q. YOU'RE FAMILIAR WITH THIS DOCUMENT?

19 A. I AM, YES.

20 Q. IT WAS ANOTHER PUBLICLY POSTED DOCUMENT?

21 A. IT WAS, YES.

22 Q. AND WOULD YOU NOTE WHAT THE PUBLIC IS BEING TOLD
23 ABOUT THE TESTING OF THE EVS 6021?

24 A. SURE THING. THE DOCUMENT'S DATED OCTOBER 31,
25 2018. AND THE NOTATION UNDER THE ES&S EVS 6021 IS THAT

1 TESTING IS COMPLETE AND FINAL CERTIFICATION REPORT AND
2 PAPERWORK ARE IN PROGRESS.

3 Q. AT ANY TIME BETWEEN THIS DATE AND THE SIGNING OF
4 THE SETTLEMENT AGREEMENT, NOVEMBER 28TH, DID MR. MAAZEL
5 OR HIS TEAM ASK FOR A DRAFT OF THE CERTIFICATION OR TO
6 TELL US OR TO TELL YOU OR ASK YOU, PLEASE GIVE ME THE
7 CERTIFICATION NOW THAT I SEE IT'S ALMOST DONE?

8 A. NO.

9 Q. THE CERTIFICATION REPORT ITSELF, WHICH WAS
10 EXHIBIT 34, PLAINTIFFS' -- JOINT EXHIBIT, I'M SORRY, 34,
11 THAT CERTIFICATION REPORT, 34?

12 A. OKAY.

13 Q. JUST TO NOTE, SINCE YOU ARE THE ONE ON THE STAND
14 NOW AND NOT MS. BOOCKVAR, PAGE 32. THE REFERENCE TO THE
15 EXPRESSVOTE XL ALLOWS THE VOTER TO VALIDATE THE PAPER
16 BALLOT THROUGH A GLASS WINDOW BEFORE CASTING, ARE YOU
17 FAMILIAR THAT THAT LANGUAGE IS IN THE CERTIFICATION
18 REPORT?

19 A. YES, I AM FAMILIAR WITH THAT.

20 Q. ALL RIGHT. ARE YOU FAMILIAR THAT ON -- GO TO
21 JOINT EXHIBIT 33. THAT THE DAY AFTER THE SETTLEMENT
22 AGREEMENT AND THE DAY BEFORE THE CERTIFICATION REPORT,
23 THE EMERY CELLI FIRM ISSUED A PRESS RELEASE TO THE
24 WORLD?

25 A. I AM FAMILIAR, YES.

1 Q. AND DO YOU -- DID YOU KNOW THAT MR. MAAZEL TOLD
2 YOU IN CONNECTION WITH THE SETTLEMENT DISCUSSION THAT
3 THEY WOULD BE WATCHING CLOSELY TO ENSURE PENNSYLVANIA'S
4 IMPLEMENTATION?

5 A. YES. FIRST, I THINK THEY WERE PRETTY EXCITED
6 ABOUT THE SETTLEMENT AND THEN THEY WOULD BE WATCHING IT
7 CLOSELY, YES.

8 Q. AND THEY WERE WATCHING CLOSELY.

9 AND THE CERTIFICATION OF THE XL AND THE
10 SUITE WAS PUBLICLY POSTED THE NEXT DAY?

11 A. IT WAS, YES.

12 Q. AVAILABLE TO ANYONE WHO WANTED TO LOOK AT IT?

13 A. YES.

14 Q. ALL RIGHT. NOW, BETWEEN THAT DATE AND LATE JULY
15 2019, DID YOU HEAR FROM MR. MAAZEL, DR. HALDERMAN, THEIR
16 TEAM, ANYONE, THAT THEY HAD PROBLEMS, ANY PROBLEMS WITH
17 THE -- WHETHER THE XL MET THE TERMS OF THE SETTLEMENT
18 AGREEMENT?

19 A. I DID NOT, NO.

20 Q. NOW, LET'S TURN TO EXHIBIT 43. AND MR. MAAZEL
21 ASKED YOU ABOUT THAT.

22 A. OKAY.

23 Q. THIS LETTER IS THE FIRST TIME -- IS THIS TRUE,
24 YOU TELL ME, THAT THIS IS THE FIRST TIME YOU HEARD FROM
25 MR. MAAZEL OR HIS TEAM THAT THEY HAD A PROBLEM WITH THE

1 XL MACHINE AND WHETHER IT MET THE TERMS OF THE
2 SETTLEMENT AGREEMENT?

3 A. I BELIEVE SO, YES.

4 Q. ALL RIGHT. WHAT IS THE OBJECTION THAT MR.
5 MAAZEL RAISES IN THE JULY 29TH LETTER?

6 A. THE PRIMARY FOCUS OF THIS PARTICULAR
7 CORRESPONDENCE WERE THE BARCODES THAT WERE PRINTED BY
8 THE XL MACHINE.

9 Q. IS THAT THE PRIMARY FOCUS OR THE ONLY FOCUS?

10 A. THE ONLY FOCUS.

11 Q. HE IS TALKING ABOUT WHETHER BARCODES ARE
12 PERMISSIBLE UNDER THE SETTLEMENT AGREEMENT?

13 A. CORRECT.

14 Q. ALL RIGHT. LOOK AT JOINT EXHIBIT 57 ONCE MORE.
15 THIS IS THE RECORD, THE SUMMARY RECORD THAT IS PRODUCED
16 BY THE XL MACHINE?

17 A. IT IS, YES.

18 Q. THERE ARE BARCODES ON IT?

19 A. THERE ARE.

20 Q. AND YOU RECALL THE OCTOBER 9, 2018 E-MAIL
21 THAT -- FROM MR. MAAZEL THAT ALSO FORWARDED DR.
22 HALDERMAN'S COMMENTS?

23 A. I DO RECALL.

24 Q. DO YOU RECALL THAT DR. HALDERMAN WAS TALKING
25 ABOUT THE AUTO CAST PROBLEM?

1 A. YES, I DO.

2 Q. AND THAT PERTAINS TO WHETHER OR NOT THE VOTER IS
3 VERIFYING THEIR SUMMARY BALLOT, THE PAPER BALLOT,
4 WHATEVER YOU WANT TO CALL IT, BEFORE CASTING IT?

5 A. THAT'S CORRECT.

6 Q. SO DR. HALDERMAN IS REFERRING TO THIS VERY PIECE
7 OF PAPER WHEN HE IS COMMENTING ON THE AUTO CAST
8 FUNCTION?

9 A. THAT IS MY UNDERSTANDING, MY BELIEF.

10 Q. WITH THE BARCODES?

11 A. THAT'S CORRECT.

12 Q. SO BETWEEN THAT DAY AND JULY 29TH, I WANT TO ASK
13 YOU ONE MORE TIME, THE BARCODE COMPLAINT THAT'S IN THE
14 JULY 29, 2019 LETTER THAT IS EXHIBIT 43, WAS THAT
15 COMPLAINT EVER RAISED BY DR. HALDERMAN, MR. MAAZEL,
16 ANYBODY THAT YOU HAD ON HIS TEAM?

17 A. NO.

18 Q. ALL RIGHT. NOW, AFTER THIS BACK AND FORTH WITH
19 MR. MAAZEL ON THE MEET AND CONFER PROCESS, MR. MAAZEL
20 SENT YOU ANOTHER LETTER AND THAT IS OCTOBER 1, 2019,
21 THAT'S JOINT EXHIBIT 48, IS THAT CORRECT?

22 A. YES.

23 Q. ALL RIGHT. MR. MAAZEL IS STILL COMMENTING ABOUT
24 THE BARCODE PROBLEM ON THE FIRST PAGE OF THAT LETTER,
25 RIGHT?

1 A. HE IS, YES.

2 Q. WHAT IS THE SECOND COMMENT THAT HE NOW RAISES
3 ABOUT THE XL MACHINE ON THE TOP OF THE SECOND PAGE?

4 A. HE SAYS: SECOND, THE SETTLEMENT REQUIRES,
5 QUOTE, PAPER BALLOTS, END QUOTE, FOR EACH VOTER. A
6 SUMMARY CARD IS NOT A PAPER BALLOT IN ITS PRESENTATION
7 OR IN ITS METHOD OF PRODUCTION. IT IS ALSO EXTREMELY
8 DIFFICULT FOR ANY VOTER TO READ AND UNDERSTAND THE
9 SUMMARY CARD BEFORE CHOOSING TO, QUOTE, CAST, END QUOTE.

10 Q. ALL RIGHT. NOW, GOING BACK TO THAT OCTOBER 9TH
11 E-MAIL, WHICH IS, JUST FOR THE RECORD, JOINT EXHIBIT 20.

12 A. OKAY.

13 Q. CAN WE LOOK AGAIN AT THE FIRST PARAGRAPH. IS
14 MR. MAAZEL COMMENTING ABOUT SYSTEMS THAT USE PAPER
15 BALLOTS VERSUS PAPERLESS DRE SYSTEMS?

16 A. YEAH. I THINK HE SPECIFICALLY SAYS THAT THEY
17 ALL USE -- THE ONES THAT USE PAPER BALLOTS.

18 Q. AND THE EXPRESSVOTE'S FEEDER MACHINES, HE
19 ALREADY KNEW ABOUT FROM THE SEPTEMBER 21 POLL VOTE THAT
20 YOU HAD SENT, IS THAT CORRECT?

21 A. THAT IS CORRECT.

22 Q. AND DR. HALDERMAN IS REFERRING TO THE
23 EXPRESSVOTE PAPER TRAIL IN HIS COMMENTS ON THIS
24 OCTOBER 9 E-MAIL, EXHIBIT 20?

25 A. HE DOES SAY PAPER TRAIL, YES.

1 Q. ALL RIGHT. SO ON OCTOBER 30 -- OCTOBER 1ST,
2 RATHER, 2019, WHICH IS EXHIBIT 48, IS THIS THE FIRST
3 TIME YOU HEARD A COMPLAINT FROM MR. MAAZEL OR ANYONE ON
4 HIS TEAM ABOUT THE PAPER BALLOTS OR PAPER RECORDS THAT
5 ARE BEING USED IN THE XL MACHINE?

6 A. IT IS THE FIRST TIME.

7 Q. THIS IS -- WELL, MR. MAAZEL COUNTED DATES. AND
8 I WON'T, BUT SAY SOME TEN MONTHS AFTER THE SETTLEMENT
9 AGREEMENT?

10 A. I'LL TAKE YOUR WORD FOR IT. IT WAS OCTOBER,
11 SURE.

12 Q. BY THIS POINT IN TIME, HAD PHILADELPHIA ALREADY
13 PURCHASED THE EXPRESSVOTE XL MACHINES?

14 A. THEY HAD.

15 Q. SOME 3,800 OF THEM?

16 A. THAT SOUNDS ABOUT RIGHT.

17 Q. AND DID THEY ANNOUNCE THAT THEY WERE BUYING THEM
18 IN FEBRUARY OF 2019?

19 MR. MAAZEL: OBJECTION TO LEADING.

20 BY MR. ARONCHICK:

21 Q. ALL RIGHT. WHEN DID THEY ANNOUNCE THEY WERE
22 BUYING THEM?

23 A. IT WAS FEBRUARY OF 2019, I BELIEVE.

24 Q. ALL RIGHT. WE SAW THAT EARLIER THIS MORNING
25 FROM THE EXHIBITS?

1 A. AND I HEARD IT THIS MORNING. YES, I HEARD THIS
2 MORNING SECRETARY BOOCKVAR'S TESTIMONY. AND I ALSO KNEW
3 THAT.

4 MR. ARONCHICK: I DON'T HAVE ANY FURTHER
5 QUESTIONS.

6 THE COURT: MR. MAAZEL?

7 REDIRECT EXAMINATION

8 BY MR. MAAZEL:

9 Q. IN JOINT EXHIBIT 20, WHICH MR. ARONCHICK SHOWED
10 YOU, YOU TESTIFIED AT LENGTH ABOUT THIS OCTOBER 9, 2018
11 E-MAIL RESPONSE THAT YOU RECEIVED FROM ME?

12 A. IS THAT A QUESTION? YES, I DID.

13 Q. AND AT THE END OF THE PARAGRAPH, FIRST
14 PARAGRAPH, IT SAID, QUOTE, SO I THINK WE AND YOU NEED A
15 MORE GRANULAR LIST OF WHICH PARTICULAR MACHINES/ELECTION
16 SYSTEMS ARE BEING PROPOSED FOR CERTIFICATION.

17 DO YOU SEE THAT?

18 A. I DO SEE THAT, YES.

19 Q. AND MS. UNGER NEVER RESPONDED TO THIS E-MAIL,
20 DID SHE?

21 A. WE DIDN'T RESPOND IN WRITING. WE HAD A
22 CONVERSATION LATER THAT DAY ON THE TELEPHONE ABOUT YOUR
23 QUESTION.

24 Q. OKAY. OTHER THAN THAT CALL, WAS THERE -- DID
25 THE DEFENDANTS EVER PROVIDE ANY KIND OF LIST OF WHICH

1 MACHINES, ELECTION SYSTEMS ARE BEING PROPOSED FOR
2 CERTIFICATION IN RESPONSE TO THIS E-MAIL?

3 A. WE DIDN'T, BECAUSE I THOUGHT AT THE END OF THE
4 CONVERSATION THAT WE WERE IN AGREEMENT, THAT YOUR
5 QUESTION HAD BEEN ANSWERED.

6 THE COURT: WHAT DO YOU RECALL TELLING
7 MR. MAAZEL IN THE CONVERSATION WHICH -- DID YOU GIVE HIM
8 THE GRANULAR BREAKDOWN OF WHICH PARTICULAR MACHINE?

9 THE WITNESS: YOUR HONOR, THE QUESTION,
10 AS I MENTIONED EARLIER, HAD TO DO WITH DRE MACHINES.
11 THE CONCERN THAT WE WERE ON THE PATH OF CERTIFYING SOME
12 DRE MACHINES. I MADE IT VERY CLEAR ON THE OCTOBER 9TH
13 TELEPHONE CALL THAT THOSE MACHINES WERE NOT PART OF ANY
14 OF THE SUITES THAT WE WERE GOING TO CERTIFY IN
15 PENNSYLVANIA. AND AS FAR AS I WAS CONCERNED, THAT
16 QUESTION WAS NEVER RAISED AGAIN. AND MR. MAAZEL OR
17 ANYONE FROM HIS TEAM NEVER FOLLOWED UP AGAIN AND ASKED
18 FOR ADDITIONAL INFORMATION BECAUSE WE HAD ALREADY
19 RESOLVED THAT ISSUE ON THE PHONE CALL ON OCTOBER 9TH.
20 BY MR. MAAZEL:

21 Q. DID YOU TAKE ANY NOTES OF THIS OCTOBER 9TH PHONE
22 CALL?

23 A. I DON'T BELIEVE I DID BECAUSE I DID MOST OF THE
24 TALKING.

25 Q. DID ANYONE ON YOUR SIDE TAKE NOTES?

1 A. PERHAPS.

2 Q. DO YOU RECALL THAT IN A NUMBER OF THE SETTLEMENT
3 CONVERSATIONS LEADING UP TO THE SETTLEMENT CONFERENCE
4 THAT THERE WAS DISCUSSION ABOUT AUDITS?

5 A. LOTS OF DISCUSSION ABOUT AUDITS, YES.

6 Q. AND THE PLAINTIFFS' SIDE WANTED RISK-LIMITING
7 AUDITS?

8 A. I DO RECALL, YES.

9 Q. AND DO YOU REMEMBER THAT YOU SAID A NUMBER OF
10 TIMES, WE ARE LOOKING INTO WHAT OTHER STATES ARE DOING?

11 A. I THINK WE ALL WERE, YES. I THINK YOU WERE AS
12 WELL. BUT, YES, WE WERE LOOKING AT THAT.

13 Q. AND A BIG FEATURE OF THE SETTLEMENT DISCUSSIONS
14 PRIOR TO THE SETTLEMENT CONFERENCE WAS FIGURING OUT WHAT
15 OTHER STATES WERE DOING, FIGURING OUT WHAT BEST
16 PRACTICES WERE IN TERMS OF AUDITS, RIGHT?

17 A. YES. WE WERE IN THAT PROCESS OF UNDERSTANDING
18 WHAT OTHER STATES WERE DOING, BECAUSE, AGAIN, THIS IS
19 SOMETHING -- I DON'T KNOW IF I SAID THIS, SOMETHING
20 YOU-ALL WERE VERY INTERESTED IN. WE WERE AS WELL. SO
21 WE WANTED TO MAKE SURE WE WERE DOING IT RIGHT.

22 Q. AND THAT QUESTION OF AUDITS, THAT WAS THE TOPIC
23 OF THE OCTOBER 9TH CALL, WASN'T IT?

24 A. THE CONVERSATION PRIOR TO THE DISCUSSION ABOUT
25 AUDITS WAS VERY QUICK. AGAIN, THE IDEA WAS YOU ALL WERE

1 CONCERNED, IN MY VIEW, THAT WE WERE CERTIFYING PAPERLESS
2 DRE'S OR VVPAT MACHINES THAT PRODUCED WHAT WAS LIKE A
3 PAPER RECEIPT. WE ASSURED YOU THAT THAT WAS NOT THE
4 CASE. I THINK THAT'S WHERE EVENTUALLY WHAT FOOTNOTE 3
5 CAME FROM, WHICH IS TO PROVIDE CLEAR -- AN UNDERSTANDING
6 THAT A DRE WITH A VVPAT WAS NOT CONSIDERED A PAPER
7 BALLOT UNDER THIS AGREEMENT. ONCE WE PASSED THAT QUICK
8 DISCUSSION, AND IT WAS QUICK, WE MOVED ON TO AUDITS, WE
9 MOVED ON TO THE OTHER THINGS THAT WE NEEDED TO GET TO,
10 BECAUSE WE WERE DONE, AS FAR AS I AM CONCERNED, TALKING
11 ABOUT THE TYPES OF MACHINES AND THE RECORDS THAT THEY
12 PRODUCED.

13 Q. THIS EXHIBIT, AND YOUR COUNSEL SHOWED -- OR YOUR
14 CO-COUNSEL SHOWED, DX M, THAT WAS A POLLING LIST?
15 DEFENDANTS --

16 A. OKAY.

17 Q. DEFENDANTS NEVER SENT THAT DOCUMENT TO THE
18 PLAINTIFFS, CORRECT?

19 A. THAT'S SIMILAR TO THE LINE OF QUESTIONING
20 BEFORE. YOU ARE ASKING ME IF I EVER SENT THIS DIRECTLY
21 TO YOU OR ANYBODY ELSE. NO, I DID NOT.

22 Q. AM I CORRECT THAT THE ONE AND ONLY POLLING LIST
23 YOU ARE FAMILIAR WITH THAT THE DEFENDANTS SENT THE
24 PLAINTIFFS WAS JX 12?

25 A. I COULDN'T TELL YOU THAT TO BE CERTAIN, BUT I

1 COULDN'T DISAGREE WITH YOU EITHER. THAT MIGHT BE TRUE.
2 THESE WERE DOCUMENTS THAT WERE AVAILABLE ONLINE.

3 Q. AND YOU HAD SAID THAT ON A NUMBER OF OCCASIONS.
4 BUT THE SETTLEMENT AGREEMENT, THE TYPE OF MONITORING IT
5 PROVIDES FOR SAYS NOTHING ABOUT PLAINTIFFS HAVING
6 OBLIGATIONS TO GO ONLINE, DOES IT?

7 A. THIS -- YOU ARE TALKING ABOUT A DOCUMENT NOW
8 THAT PREDATES THE SIGNING OF THE AGREEMENT. SO I DON'T
9 KNOW IF YOU'RE TALKING ABOUT AFTER OR BEFORE THE SIGNING
10 OF THE AGREEMENT. IF YOU ARE TALKING ABOUT BEFORE AND
11 WHETHER OR NOT YOU-ALL WERE AWARE THAT WE WERE
12 CERTIFYING THE XL MACHINE, I THINK WE MADE IT VERY CLEAR
13 THAT WE WERE AND THAT IT WAS GOING THROUGH THE
14 CERTIFICATION PROCESS. IN FACT, THAT IT ALREADY HAD
15 GONE THROUGH THAT PROCESS.

16 AND IF YOU WANT TO -- I MEAN, I CAN GO ON
17 TO THE NEXT PORTION OF WHAT YOU ARE TALKING ABOUT, WHICH
18 IS PROVIDING YOU NOTICE AND THE IDEA OF THE CONCEPT THAT
19 WE WERE TRYING TO ARTICULATE IN THE AGREEMENT. IT WAS
20 THAT YOU WISH TO HAVE DR. HALDERMAN OR ONE OF YOUR OTHER
21 FOLKS SIT IN ON THE CERTIFICATIONS, THE PUBLIC PORTIONS
22 OF THOSE CERTIFICATIONS SO THAT HE COULD VIEW THAT
23 PROCESS, SO THAT HE COULD COMMENT AT BREAKS AND HE COULD
24 PROVIDE THOSE COMMENTS TO US BEFORE WE CERTIFIED THE
25 MACHINES.

1 Q. SIR, THE WORD XL NEVER CAME UP IN A SINGLE
2 COMMUNICATION THE DEFENDANTS HAD WITH PLAINTIFFS AT ANY
3 POINT, ISN'T THAT RIGHT?

4 A. THE XL? THE SUITE OF SYSTEMS, WHICH INCLUDED
5 THE XL DID.

6 Q. THE WORD XL, EXPRESSVOTE XL, DID THAT -- DID
7 ANYONE EVER MENTION SPECIFICALLY THAT SYSTEM,
8 EXPRESSVOTE XL, IN ANY SETTLEMENT DISCUSSION?

9 A. I NEVER SAID --

10 MR. ARONCHICK: OBJECTION.

11 THE COURT: OVERRULED.

12 THE WITNESS: I DIDN'T SAY XL TO YOU. WE
13 DID TALK ABOUT THE SUITE OF SYSTEMS PROVIDED BY ES&S.
14 BY MR. MAAZEL:

15 Q. ARE YOU AWARE OF ANYONE ELSE ON THE DEFENSE SIDE
16 WHO EVER MENTIONED THE EXPRESSVOTE XL SPECIFICALLY TO
17 PLAINTIFFS AT ANY POINT?

18 A. WE DID PROVIDE TO YOU -- AGAIN, WE SAID ES&S
19 THAT INCLUDES TWO MACHINES THAT WE WERE CERTIFYING. ONE
20 OF THEM WAS THE XL, THE OTHER WAS THE 2.1. BOTH OF THEM
21 PRODUCED THE SAME RECORD. SAME MACHINE THAT DR.
22 HALDERMAN REVIEWED AND TOLD US WASN'T A LEMON.

23 Q. I JUST WANT TO MAKE SURE THE TESTIMONY IS CLEAR
24 FOR --

25 THE COURT: I HAVE GOTTEN IT.

1 MR. MAAZEL: OKAY.

2 THE COURT: I HAVE GOT IT.

3 MR. MAAZEL: OKAY.

4 BY MR. MAAZEL:

5 Q. THE SETTLEMENT AGREEMENT ITSELF PROVIDED FOR A
6 VERY SPECIFIC TYPE OF MONITORING, YES?

7 A. IF YOU WANT TO GO BACK TO -- AND FIGURE OUT
8 WHICH PARAGRAPH YOU ARE TALKING ABOUT?

9 Q. WE CAN JUST --

10 THE COURT: EXHIBIT 30. EVEN I REMEMBER
11 IT.

12 THE WITNESS: I REMEMBER THAT ONE. I
13 JUST HAVE TO GET TO IT. IT'S IN THE OTHER BINDER.

14 OKAY. WHICH PARAGRAPH ARE YOU TALKING
15 ABOUT? PARAGRAPH 4?

16 BY MR. MAAZEL:

17 Q. PARAGRAPH 4 OF EXHIBIT 30.

18 A. ALL RIGHT.

19 Q. PUT THE BURDEN ON THE DEFENDANTS TO ALLOW
20 DESIGNATED PLAINTIFFS TO OBSERVE THE CERTIFICATION
21 PROCESS, CORRECT?

22 A. IT SAYS THAT, BUT ALSO THERE IS A, B AND C HERE
23 THAT PROVIDE THE DETAILS OF WHAT WE WERE TO PROVIDE,
24 YES.

25 Q. AND THEN IN ADDITION, IT SAYS THAT: THE

1 SECRETARY SHALL ENSURE THAT THE PLAINTIFFS ARE MADE
2 AWARE OF ALL CURRENTLY SCHEDULED AND FUTURE SCHEDULED
3 COMMONWEALTH ON-SITE CERTIFICATION TESTING FOR VOTING
4 SYSTEMS.

5 A. IT SAYS THAT, YES, IN 2.

6 Q. THERE IS NO REQUIREMENT IN THE SETTLEMENT
7 AGREEMENT THAT THE PLAINTIFFS MONITOR YOUR WEBSITE, IS
8 THERE?

9 A. NOT IN THE SETTLEMENT AGREEMENT.

10 Q. IS THERE ANY REQUIREMENT IN THE SETTLEMENT
11 AGREEMENT THAT THE PLAINTIFFS MONITOR THE WEBSITES OF
12 DOZENS OF MANUFACTURERS?

13 A. NO. BUT, AGAIN, I ASSUME THAT YOU WERE DOING
14 THAT BASED ON THE FACT THAT YOU SAID YOU WERE
15 CONTINUALLY MONITORING WHAT WE WERE DOING.

16 Q. I AM ASKING A VERY NARROW QUESTION.

17 A. OKAY.

18 Q. IS THERE ANYTHING IN THE SETTLEMENT AGREEMENT
19 THAT PROVIDES FOR ANY KIND OF MONITORING --

20 THE COURT: TIME IS UP, MR. MAAZEL.

21 MR. MAAZEL: OKAY. I HAVE NO FURTHER
22 QUESTIONS, YOUR HONOR.

23 MR. ARONCHICK: I DON'T HAVE ANYTHING
24 FURTHER.

25 THE COURT: ALL RIGHT. THANK YOU VERY

1 MUCH.

2 THE WITNESS: THANK YOU, YOUR HONOR.

3 THE COURT: WHY DON'T WE TAKE A SHORT
4 BREAK. AND WHO IS THE NEXT WITNESS YOU THINK YOU CAN
5 CALL?

6 MR. MAAZEL: YES, WE WERE GOING TO CALL
7 KATHLEEN KOTULA NEXT, YOUR HONOR.

8 THE COURT: OKAY. WE WILL GO TO 6:00 AND
9 I WILL BE GUIDED BY THE PARTIES.

10 (BRIEF RECESS TAKEN.)

11 THE COURT: PLEASE BE SEATED.

12 MR. ARONCHICK: JUDGE, I HAVE A REPORT ON
13 THE TIMING.

14 THE COURT: YES, YES.

15 MR. ARONCHICK: SO WE ARE PROBABLY NOT
16 GOING TO GET TO DR. HALDERMAN TODAY, IF WE ARE ENDING AT
17 6:00. SO IF THIS IS ACCEPTABLE, DEPENDING UPON YOUR
18 TIMING, DR. HALDERMAN, THEN BAUMERT FROM ES&S, SO HE CAN
19 GET ON A PLANE TOMORROW, IN OTHER WORDS, HE'S CHANGED IT
20 TO TOMORROW. THE TWO CITY WITNESSES, IF THEY DON'T FIT
21 TOMORROW, WE'LL TAKE THEM ANOTHER TIME. IF THEY DO,
22 THAT'S FINE. WE WILL HAVE ENOUGH TIME TO GET DR.
23 HALDERMAN AND BAUMERT.

24 THE COURT: TODAY?

25 MR. ARONCHICK: TOMORROW.

1 THE COURT: AS I SAID, I HAVE MOVED MY
2 FINAL PRETRIAL TO 4 O'CLOCK. AND I DON'T THINK IT WILL
3 TAKE A WHOLE LOT MORE THAN TEN MINUTES, EVEN IF I HAVE
4 TO INTERRUPT THESE PROCEEDINGS.

5 MR. ARONCHICK: SO THAT WILL WORK.

6 THE COURT: IT WILL. AND I HAVE MOVED
7 THE OTHER MATTER.

8 SO YOU ARE GOING TO CALL MS. KOTULA?

9 MR. MAAZEL: YES, YOUR HONOR.

10 THE COURT: OKAY.

11 (WITNESS SWORN.)

12 THE WITNESS: MY FIRST NAME IS KATHLEEN,
13 K-A-T-H-L-E-E-N. AND MY LAST NAME IS KOTULA,
14 K-O-T-U-L-A.

15 DIRECT EXAMINATION

16 BY MR. MAAZEL:

17 Q. GOOD AFTERNOON, MS. KOTULA.

18 THE COURT: GOOD EVENING.

19 MR. MAAZEL: GOOD EVENING.

20 BY MR. MAAZEL:

21 Q. IT'S NICE TO SEE YOU AGAIN.

22 YOU ARE THE EXECUTIVE DEPUTY CHIEF
23 COUNSEL FOR THE DEPARTMENT OF STATE, YES?

24 A. I AM.

25 Q. AND WAS THAT YOUR ROLE THROUGHOUT THE LAST

1 COUPLE OF YEARS?

2 A. YES, SINCE 2018.

3 Q. OKAY. AND YOU REPORT TO TIM GATES?

4 A. I DO.

5 Q. AND WERE YOU THE PERSON WHO INTERACTED PRIMARILY
6 WITH DR. HALDERMAN DURING THE DURATION OF THE
7 SETTLEMENT?

8 A. POST SETTLEMENT, YES, I HAD CONTACT WITH DR.
9 HALDERMAN.

10 Q. YES. YOU WERE THE PRIMARY PERSON ON THE DEFENSE
11 SIDE WHO INTERACTED WITH DR. HALDERMAN?

12 A. YES.

13 Q. AND YOU UNDERSTOOD THAT HE WAS THE DESIGNEE FOR
14 PLAINTIFFS TO MONITOR THE CERTIFICATION PROCESS?

15 A. THAT'S CORRECT.

16 Q. AND, VERY QUICKLY, YOU DISCUSSED THIS EVS 6021
17 SUITE, YES?

18 A. YES.

19 Q. THAT SUITE HAS A WHOLE BUNCH OF DIFFERENT
20 SYSTEMS WITHIN IT, RIGHT?

21 A. YES. THERE ARE DIFFERENT COMPONENTS WITHIN A
22 SUITE OF A VOTING SYSTEM.

23 Q. SOME 27 DIFFERENT SOFTWARE COMPONENTS TO THIS
24 WHOLE SUITE?

25 A. I DON'T KNOW THAT FOR CERTAIN, HOW MANY

1 DIFFERENT SOFTWARE COMPONENTS. BUT THERE ARE
2 DIFFERENT -- CERTAINLY DIFFERENT HARDWARE COMPONENTS,
3 BALLOT-MARKING DEVICES, PRECINCT SCANNERS, CENTRAL
4 SCANNERS.

5 Q. AND WITHIN THAT SUITE, THERE ARE A WHOLE BUNCH
6 OF DIFFERENT VOTING SYSTEMS THAT WORK IN DIFFERENT WAYS,
7 CORRECT?

8 A. THERE ARE DIFFERENT CONFIGURATIONS, THAT'S
9 CORRECT.

10 Q. THEY CREATE DIFFERENT PIECES OF PAPER THAT LOOK
11 DIFFERENT?

12 A. YES. I MEAN, IF YOU ARE TALKING ABOUT
13 BALLOT-MARKING DEVICES AS OPPOSED TO HAND-MARKED PAPER
14 BALLOTS, YES.

15 Q. AND IF YOU ARE LOOKING AT BALLOT-MARKING
16 DEVICES, THERE'S A CORRECT WAY IN HOW THEY WORK WITHIN
17 THAT SUITE, YES?

18 A. WITHIN A SUITE, WITHIN -- ARE YOU TALKING ABOUT
19 WITHIN A VENDOR'S PARTICULAR SUITE OR JUST
20 BALLOT-MARKING DEVICES IN GENERAL?

21 Q. I'M TALKING ABOUT THE EVS 6021 SUITE. IT HAS A
22 WHOLE BUNCH OF DIFFERENT TYPES OF VOTING SYSTEMS WITHIN
23 THAT SUITE.

24 A. THERE ARE -- YES, THERE ARE DIFFERENT
25 CONFIGURATIONS.

1 Q. OKAY. NOW, WE HAVE -- YOU WERE HERE FOR THE
2 TESTIMONY ABOUT THE STIPULATION IN PARAGRAPH 44, YES?
3 THAT THE DEFENDANTS DID NOT COMMUNICATE THE
4 CERTIFICATION OF THIS SUITE TO PLAINTIFFS?

5 A. YES.

6 Q. AND THAT IS AN ACCURATE AND TRUTHFUL STATEMENT,
7 RIGHT?

8 A. YES. WE DID NOT SEND THE CERTIFICATION REPORT.

9 Q. FOR THE SUITE?

10 A. FOR THE EVS -- THE ES&S EVS 6021.

11 Q. WHICH INCLUDES THE XL?

12 A. CORRECT.

13 Q. AND IN ADDITION TO NOT SENDING THAT REPORT, AT
14 ANY POINT YOU NEVER TOLD DR. HALDERMAN ABOUT THE
15 CERTIFICATION, CORRECT?

16 A. I DISAGREE WITH THAT.

17 Q. WELL --

18 THE COURT: WHY DO YOU DISAGREE WITH
19 THAT?

20 THE WITNESS: WELL, I DISAGREE IN THE
21 SENSE THAT WE DID -- WE TOLD THE PLAINTIFFS IN THE
22 STATUS REPORTS THAT WAS PROVIDED THAT -- THE STATUS
23 REPORT INDICATED THAT THE SYSTEM WAS BEING EXAMINED IN
24 LATE SEPTEMBER OF 2018. SO THAT'S WHY I DISAGREE.
25 BY MR. MAAZEL:

1 Q. BUT AFTER THE SYSTEM WAS CERTIFIED, AS SET FORTH
2 IN STIPULATION NUMBER 44, DEFENSE COUNSEL DID NOT
3 COMMUNICATE THAT CERTIFICATION IN ANY FORM TO THE
4 PLAINTIFFS, CORRECT?

5 MR. WIYGUL: OBJECTION.

6 THE COURT: OVERRULED.

7 THE WITNESS: THAT'S CORRECT.

8 BY MR. MAAZEL:

9 Q. OKAY. NOW, CAN YOU LOOK AT PLAINTIFFS'
10 EXHIBIT 1001. AND DO YOU RECOGNIZE THIS TO BE A SERIES
11 OF E-MAILS BETWEEN DR. HALDERMAN AND YOURSELF BETWEEN
12 OCTOBER 24TH, 2018 AND NOVEMBER 3RD, 2019?

13 A. YES.

14 Q. AND SO IF WE CAN TURN TO -- IS YOUR EXHIBIT, IS
15 THERE PAGE NUMBERS AT THE BOTTOM, HANDWRITTEN?

16 A. YES. AND WHOEVER DID THAT, THANK YOU.

17 Q. I HOPE THAT MY COLLEAGUE MR. LIEB GETS CREDIT
18 FOR THAT.

19 MR. LIEB: THAT'S WHY I WENT TO LAW
20 SCHOOL.

21 BY MR. MAAZEL:

22 Q. SO IF WE TURN TO PAGE 2.

23 A. YES.

24 Q. AND THIS IS DR. HALDERMAN REACHING OUT TO YOU
25 FOR THE FIRST TIME ON OCTOBER 24, 2018, RIGHT?

1 A. YES.

2 Q. AND HE WRITES, I HOPE WE CAN FIND TIME TO TALK
3 SOON REGARDING HOW I CAN BEST ENGAGE WITH PENNSYLVANIA'S
4 VOTING SYSTEM TESTING, RIGHT?

5 A. YES.

6 Q. AND THEN YOU HAD SOME SORT OF CALL AFTER THAT?

7 A. ACCORDING TO THE E-MAILS, YES, THAT'S WHAT IT
8 APPEARS.

9 Q. DO YOU REMEMBER THAT CALL, WHAT WAS SAID IN THE
10 CALL?

11 A. I DON'T REMEMBER THE SPECIFICS OF IT. BUT BASED
12 ON THE CONTEXT IN THE E-MAIL, IT APPEARS THAT WE
13 DISCUSSED THE CLEARBALLOT EXAMINATION.

14 Q. AND THEN YOU FOLLOWED UP WITH AN E-MAIL ABOUT
15 THE CLEARBALLOT EXAMINATION, CORRECT?

16 A. YES.

17 Q. AND SO THIS WAS A VOTING SYSTEM THAT THE
18 SECRETARY WAS GOING TO TEST AND CONSIDER FOR
19 CERTIFICATION?

20 A. YES.

21 Q. AND ON PAGE 6 OF THIS DOCUMENT, YOU E-MAILED DR.
22 HALDERMAN, QUOTE, PLEASE LET ME KNOW IF YOU PLAN TO
23 ATTEND IN PERSON. OTHERWISE WE CAN DISCUSS ARRANGEMENTS
24 REGARDING THE VIDEO RECORDING OF THE EXAMINATION, YES?

25 A. I SEE THAT, YES.

1 Q. AND THAT'S AN E-MAIL THAT YOU SENT I BELIEVE ON
2 OCTOBER 26, 2018?

3 A. CORRECT.

4 Q. SO THIS IS BEFORE THE SETTLEMENT AGREEMENT WAS
5 SIGNED. YOU WERE INVITING DR. HALDERMAN, IF HE COULDN'T
6 MAKE IT TO TESTING, TO LOOK AT VIDEOS?

7 A. CORRECT. IT WAS IN THE INTERIM PERIOD AFTER THE
8 TERM SHEET HAD BEEN AGREED UPON BEFORE THE SETTLEMENT
9 AGREEMENT WAS SIGNED.

10 Q. AND THE VIDEOS --

11 THE COURT: IS THAT DR. HALDERMAN SITTING
12 THERE?

13 MR. MAAZEL: YES.

14 THE COURT: NICE TO SEE YOU AGAIN,
15 DOCTOR. WELCOME BACK FROM AUSTRALIA. I WOULD
16 APPRECIATE IT IF YOU DIDN'T SHAKE YOUR HEAD YES AND NO
17 IN RESPONSE TO THE QUESTIONS AND ANSWERS.

18 DR. HALDERMAN: EXCUSE ME, YOUR HONOR.

19 THE COURT: THANK YOU. GO AHEAD.

20 MR. MAAZEL: APOLOGIES, YOUR HONOR.

21 THE COURT: I DERAILED YOUR TRAIN OF
22 THOUGHT. SORRY.

23 BY MR. MAAZEL:

24 Q. SO YOU MADE CLEAR TO DR. HALDERMAN THAT -- I'M
25 SORRY, THAT'S WHAT I WAS GOING TO ASK.

1 THE VIDEOS ARE VIDEOS THAT ARE TAKEN OF
2 THE TESTING ITSELF, RIGHT?

3 A. THE VIDEOS ARE TAKEN OF WHAT WE CALL THE ON-SITE
4 EXAMINATION, WHICH IS THE FUNCTIONALITY EXAMINATION OF
5 THE VOTING SYSTEM. THAT'S WHERE THE SECRETARY AND HER
6 STAFF ARE LOOKING AT THE VOTING SYSTEM IN TERMS OF DOES
7 IT DO STRAIGHT-PARTY CORRECTLY, DOES IT PREVENT
8 OVERVOTES, HOW DOES IT WARN VOTERS OF UNDERVOTES. SO
9 IT'S THE FUNCTIONALITY PORTION OF THE EXAMINATION.

10 Q. AND THOSE ON-SITE EXAMINATIONS OFTEN TAKE
11 MULTIPLE DAYS?

12 A. THAT'S CORRECT.

13 Q. SO IT COULD BE 10, 15 HOURS OF VIDEO OR EVEN
14 MORE?

15 A. EVEN MORE. IT WOULD NOT BE -- IT WOULD NOT BE
16 ATYPICAL, AND, IN FACT, FOR THE EVS 6021, MY
17 RECOLLECTION IS THAT EXAM TOOK FOUR DAYS. AND THOSE ARE
18 FOUR FULL DAYS, SOMETIMES GOING BEYOND CLOSE OF
19 BUSINESS.

20 Q. AND THOSE EXAMINATIONS ARE OPEN TO THE PUBLIC?

21 A. THEY ARE OPEN TO THE PUBLIC, YES.

22 Q. AND SO ON OCTOBER 30TH -- THIS IS PAGE 7. ON
23 OCTOBER 30TH, DR. HALDERMAN RESPONDED TO YOU THAT HE WAS
24 NOT GOING TO BE ABLE TO MAKE IT IN PERSON TO THIS
25 PARTICULAR CLEARBALLOT EXAMINATION AND PLEASE ARRANGE

1 FOR ME TO SEE A COPY OF THE VIDEO, YES?

2 A. YES.

3 Q. AND THEN AM I CORRECT, JUST LOOKING AT THIS
4 E-MAIL CHAIN, THAT THIS PARTICULAR CLEARVOTE EXAMINATION
5 WAS ACTUALLY POSTPONED FOR SOME REASON?

6 A. THAT'S CORRECT. THE VENDOR ULTIMATELY WITHDREW
7 THAT PARTICULAR VERSION OF THE SYSTEM FROM
8 CERTIFICATION, BECAUSE, LIKE EVERY OTHER VENDOR THAT
9 CAME INTO PENNSYLVANIA, NONE OF THEM COULD GET THE
10 PENNSYLVANIA METHOD OF VOTING CORRECT ON THE STRAIGHT
11 PARTY, SO...

12 Q. OKAY. AND THEN ON DECEMBER 4TH YOU GAVE DR.
13 HALDERMAN NOTICE OF -- I'M SORRY, THIS IS PAGE 10. ON
14 DECEMBER 4, 2018, YOU GAVE DR. HALDERMAN NOTICE OF AN
15 ON-SITE EXAMINATION OF THE HART VERITY 2.3 VOTING
16 SYSTEM?

17 A. THAT'S CORRECT, YES.

18 Q. AND THEN YOU HAVE A CORRESPONDENCE BACK AND
19 FORTH WITH DR. HALDERMAN ABOUT THE HART EXAMINATION,
20 YES?

21 A. THAT'S CORRECT. I THINK I SENT HIM A MAP OF THE
22 COMPLEX AND EVERYTHING.

23 Q. AND THAT EXAMINATION ACTUALLY HAPPENED?

24 A. IT DID, IN JANUARY OF 2019.

25 Q. AND DR. HALDERMAN ATTENDED THAT ONE IN PERSON?

1 A. HE DID.

2 Q. AND THEN ON PAGE 13 ON JANUARY 29, 2019, HE
3 WROTE AN E-MAIL TO YOU AND JOHN HARTZELL?

4 A. THAT'S CORRECT.

5 Q. AND THANK YOU FOR ACCOMMODATING HIM IN
6 HARRISBURG AND GIVING SOME FEEDBACK ON THE HART SYSTEM?

7 A. YES.

8 Q. AND IN THE SECOND PARAGRAPH, DR. HALDERMAN
9 WROTE, QUOTE, CERTAINLY SOME OF THESE ISSUES ARE SHARED
10 BY OTHER VENDOR SYSTEMS AND I HOPE TO HAVE THE CHANCE TO
11 GO BACK AND REVIEW THE VIDEOS FROM THOSE TESTS SO I CAN
12 PROVIDE SIMILAR FEEDBACK.

13 A. THAT'S CORRECT.

14 Q. SO HERE DR. HALDERMAN WAS ASKING FOR ANY VIDEOS
15 OF TESTS THAT YOUR OFFICE, YOUR DEPARTMENT DID THAT HE
16 WAS NOT PRESENT FOR, CORRECT?

17 A. YES. HE WAS ASKING FOR THE OTHER VENDORS'
18 VIDEOS.

19 Q. NOW, IS THERE ANY E-MAIL WITH DR. HALDERMAN --
20 WELL, LET ME WITHDRAW THAT AND ASK THIS FIRST. ARE YOU
21 AWARE OF ANY E-MAILS WITH DR. HALDERMAN THAT YOU HAD
22 OTHER THAN WHAT'S IN THIS EXHIBIT?

23 A. I AM NOT AWARE OF ANY, NO.

24 Q. IN ANY E-MAIL WITH DR. HALDERMAN IN OCTOBER OR
25 NOVEMBER OF 2018, OR DECEMBER OF 2018 OR JANUARY OF

1 2019, DID YOU EVER REFER TO ANY ES&S SYSTEM?

2 A. I AM NOT AWARE OF IT, NO.

3 Q. DID YOU EVER REFER TO ANY ES&S TESTING OF ANY
4 KIND FOR WHATEVER THEY MIGHT BE TESTING?

5 A. IN MY E-MAILS ABOUT THE EXAMINATION?

6 Q. IN ANY E-MAIL YOU HAD WITH DR. HALDERMAN IN ALL
7 THE E-MAILS.

8 A. NO. ES&S IS NOT MENTIONED IN THESE E-MAILS.

9 Q. OKAY. AND IN THOSE MONTHS, OCTOBER, NOVEMBER,
10 DECEMBER, JANUARY, DO YOU HAVE ANY MEMORY OF DISCUSSING
11 ANY ES&S SYSTEM WITH DR. HALDERMAN?

12 A. I DON'T -- NO, I DON'T HAVE ANY RECOLLECTION
13 BECAUSE -- WELL, I DON'T HAVE A RECOLLECTION THAT THERE
14 WAS A DISCUSSION BECAUSE THE ES&S EXAMINATION HAD
15 ALREADY OCCURRED IN LATE SEPTEMBER OF 2018.

16 Q. I BELIEVE IT'S STIPULATED THAT IT WAS LATE
17 FEBRUARY 2019 WHEN PHILADELPHIA VOTED TO USE THE XL
18 SYSTEM?

19 A. YES.

20 Q. AT ANY POINT -- WELL, WITHDRAWN.

21 IS IT A FACT THAT BEFORE PHILADELPHIA
22 VOTED TO TAKE AND USE THIS XL SYSTEM, YOU NEVER SAID
23 ANYTHING ABOUT ES&S TO DR. HALDERMAN, CORRECT?

24 A. IN THE CONTEXT OF THESE E-MAILS, THE EXCHANGES
25 BACK AND FORTH ABOUT THE EXAMINATION, NO, I DIDN'T SAY

1 ANYTHING TO HIM IN THE CONTEXT OF THESE E-MAILS.

2 Q. YOU DIDN'T SAY ANYTHING AT ALL ABOUT HOW THE
3 SYSTEM HAD BEEN CERTIFIED OR ANYTHING LIKE THAT, RIGHT?

4 A. WELL, AGAIN, I JUST GO BACK TO THE STATUS REPORT
5 THAT WAS PART OF THE COMMUNICATION THAT INDICATED THAT
6 THE EXAMINATION FOR THAT SYSTEM WAS GOING TO OCCUR IN
7 LATE SEPTEMBER OF 2018.

8 Q. OKAY.

9 THE COURT: DID YOU EVER MENTION IT
10 VERBALLY, ORALLY, IN YOUR CONVERSATIONS WITH HIM OR CAN
11 YOU RECALL?

12 THE WITNESS: NOT THAT I CAN RECALL.

13 THE COURT: OKAY.

14 BY MR. MAAZEL:

15 Q. AND AT ANY POINT IN 2018 DID YOU EVER PROVIDE
16 DR. HALDERMAN VIDEOS OF ANY ES&S TESTING?

17 A. NO.

18 Q. IF WE CAN LOOK AT PAGE 17 OF PLAINTIFFS 1001.

19 A. YES.

20 Q. 1001. SO ON FEBRUARY 21ST, 2019, DR. HALDERMAN
21 WRITES YOU AGAIN, QUOTE, TO ASK AGAIN HOW I CAN OBTAIN
22 THE VIDEOS FROM YOUR EARLIER CERTIFICATION SESSIONS. I
23 WOULD LIKE TO REVIEW THEM.

24 HE SENT THAT TO YOU, YES?

25 A. THAT'S CORRECT.

1 Q. BETWEEN JANUARY 29 AND FEBRUARY 21, DURING THAT
2 FIRST PERIOD WHERE HE ASKED YOU FOR VIDEOS, YOU HAD NOT
3 GIVEN HIM ANY VIDEOS, CORRECT?

4 A. WE HAD NOT.

5 Q. THAT'S MY QUESTION.

6 AND THEN ON FEBRUARY 26TH -- WELL,
7 WITHDRAWN.

8 DID YOU RESPOND TO THE FEBRUARY 21, 2019
9 E-MAIL FROM DR. HALDERMAN?

10 A. I DID.

11 Q. AND YOU WROTE, QUOTE, WE DID RECEIVE -- THIS IS
12 FEBRUARY 26TH, YES?

13 A. THIS IS FEBRUARY 26TH, YES.

14 Q. AND YOU WROTE, QUOTE: WE DID RECEIVE YOUR
15 E-MAIL LAST MONTH AND SHARED YOUR COMMENTS WITH OUR
16 AGENCY CLIENT. REGARDING THE VIDEOS, WE HAVE TO WORK
17 WITH THE VENDORS FIRST TO REVIEW THE VIDEOS FOR
18 PROPRIETARY INFORMATION. CORRECT?

19 A. THAT'S CORRECT, AND THAT'S WHAT I WAS ABOUT TO
20 SAY IN MY PREVIOUS RESPONSE.

21 Q. OKAY.

22 A. THIS WAS NOT AN INSIGNIFICANT REQUEST. THIS WAS
23 A LOT OF WORK.

24 Q. THESE ES&S -- THE VIDEOS OF THE ES&S TESTING,
25 THAT WAS -- THOSE WERE VIDEOS OF TESTING OPEN TO THE

1 PUBLIC, YES?

2 A. THE ON-SITE EXAMINATIONS ARE OPEN TO THE PUBLIC.
3 BUT WHAT HAPPENS -- WHAT HAPPENS WITH THESE EXAMINATIONS
4 IS THAT IT'S RARE THAT ANYBODY ACTUALLY COMES TO THE
5 EXAMINATION. OR IF SOMEBODY COMES, THEY DON'T STAY FOR
6 THE ENTIRE DURATION. SO AS A RESULT, THE VIDEO
7 CONTINUES TO RUN, BUT THERE'S NOT ACTUALLY MEMBERS OF
8 THE PUBLIC THERE.

9 SO STAFF, VENDORS AND OTHERS ARE NOT
10 ALWAYS COGNIZANT ABOUT MAKING SURE THAT WHEN THEY'RE
11 MAKING COMMENTS IN FRONT OF THE VIDEO, THAT IF THEY'RE
12 TALKING ABOUT PROPRIETARY INFORMATION, THAT THOSE
13 COMMENTS ARE BEING PICKED UP ON THE VIDEO.

14 SO, YES, THE EXAMINATIONS ARE OPEN TO THE
15 PUBLIC. YES, THERE IS A VIDEO RECORD. BUT THIS IS WHY
16 WE MADE THE DECISION THAT WE NEEDED TO HAVE THE VENDORS
17 LOOK AT THE VIDEOS. THERE ARE CONCERNS, BECAUSE OF THE
18 FACT THAT A LOT OF TIMES PEOPLE JUST DON'T SHOW UP TO
19 THESE EXAMINATIONS.

20 Q. SO EVEN THOUGH THE ENTIRETY OF THE ES&S
21 EXAMINATIONS WERE OPEN TO THE PUBLIC --

22 THE COURT: YOU ARE ARGUING. I GOT IT.

23 MR. MAAZEL: OKAY. I UNDERSTAND.

24 BY MR. MAAZEL:

25 Q. FEBRUARY 26TH IS PAGE 18. DR. HALDERMAN

1 RESPONDS AND SAYS: DO YOU KNOW WHEN THE VIDEOS WILL BE
2 AVAILABLE? AND THEN HE WROTE A FOLLOW-UP E-MAIL THE
3 SAME DAY: ALSO WEREN'T THESE CERTIFICATION SESSIONS
4 DONE IN PUBLIC? I WOULD JUST LIKE TO SEE WHAT THE
5 PUBLIC ALREADY SAW SINCE I WAS NOT THERE AT THE TIME.
6 CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND YOU DID NOT RESPOND TO THAT NOW THIRD
9 REQUEST -- I'M SORRY. YOU HAVE NOT RESPONDED TO THIS
10 NOW FOURTH REQUEST FOR VIDEOS FROM DR. HALDERMAN,
11 CORRECT?

12 A. WE DIDN'T RESPOND DIRECTLY TO THAT E-MAIL, NO.

13 Q. AND THEN ON MARCH 7TH DR. HALDERMAN WROTE TO YOU
14 AGAIN. QUOTE: I AM WRITING AGAIN TO ASK WHEN THE OTHER
15 VIDEOS WILL BE AVAILABLE FOR REVIEW.

16 A. THAT'S CORRECT.

17 Q. AND HE ALSO WROTE THAT, QUOTE, TIME IS OF THE
18 ESSENCE, YES?

19 A. YES, I SEE THAT.

20 Q. AND THEN -- WHO IS JOHN HARTZELL?

21 A. SO JOHN HARTZELL IS A DEPUTY CHIEF COUNSEL IN
22 OUR OFFICE.

23 Q. DOES HE REPORT TO YOU?

24 A. HE DOES, YES.

25 Q. AND SO THE NEXT DAY, MARCH 8, JOHN HARTZELL

1 WROTE DR. HALDERMAN COPYING YOU, SAYING, QUOTE: WE ARE
2 PROVIDING AN OPPORTUNITY TO THE VENDORS TO TAKE A LOOK
3 AT THE VIDEOS TO ENSURE THERE WAS NO PROPRIETARY OR
4 CONFIDENTIAL INFORMATION DISCLOSED. YES?

5 A. THAT'S CORRECT.

6 Q. AND THEN 20 DAYS PASS, RIGHT?

7 A. YES.

8 Q. AND ON MARCH 28, 2019, DR. HALDERMAN WRITES YOU
9 AGAIN. THIS IS NOW HIS FIFTH REQUEST FOR VIDEOS, RIGHT?

10 A. IT IS. AND, AGAIN, THIS WAS NOT AN
11 INSIGNIFICANT REQUEST. IT TOOK TIME.

12 Q. AND HE WRITES: ANY UPDATE ON THE STATUS OF THE
13 VIDEOS, YES?

14 A. THAT'S CORRECT.

15 Q. AND THEN A FEW MORE WEEKS GO BY, RIGHT?

16 A. CORRECT.

17 Q. AND ON APRIL 7TH -- THIS IS PAGE 20 ON
18 APRIL 17TH, DR. HALDERMAN WRITES A SIXTH REQUEST FOR THE
19 TESTING VIDEOS, YES? QUOTE: ANY UPDATES ABOUT WHEN THE
20 VIDEOS MIGHT BE AVAILABLE? I ASKED ALMOST THREE MONTHS
21 AGO.

22 A. YES, HE SENT AN E-MAIL ON THAT DATE ASKING.

23 Q. AND THEN A FEW MORE WEEKS GO BY, YES?

24 A. YES. AND, ACTUALLY, THE PRIMARY HAD HAPPENED IN
25 THAT TIME PERIOD, TOO.

1 Q. OKAY. BY THE WAY, THESE MONTHS, JANUARY,
2 FEBRUARY, MARCH, APRIL, THIS IS ABOUT THE -- THIS IS
3 DURING THE SAME TIME THAT PHILADELPHIA EVENTUALLY VOTED
4 TO USE THESE MACHINES, YES?

5 A. I THINK THAT'S IN THE STIPULATION.

6 Q. AND THEN IT WAS SOMETIME --

7 THE COURT: I THOUGHT IT WAS IN FEBRUARY.

8 THE WITNESS: FEBRUARY OF 2019.

9 BY MR. MAAZEL:

10 Q. AND THEN IN MAY 2019, PHILADELPHIA SIGNED A
11 CONTRACT, ACTUALLY SIGNED A CONTRACT TO USE THE XL
12 SYSTEM?

13 A. IS THAT IN THE STIPULATION? IS THAT IN THE
14 STIPULATION SOMEWHERE?

15 Q. YES, IT IS.

16 MR. MAAZEL: I WILL WITHDRAW THAT
17 QUESTION.

18 THE COURT: OKAY.

19 BY MR. MAAZEL:

20 Q. OKAY. SO DID YOU RESPOND TO THE APRIL 17 SIXTH
21 REQUEST FROM DR. HALDERMAN FOR THOSE VIDEOS?

22 A. AGAIN, THERE WASN'T A DIRECT RESPONSE. WE
23 ULTIMATELY PROVIDED THE VIDEOS. AND I KNOW YOU ARE
24 GETTING THERE, BUT THERE WAS NOT A DIRECT RESPONSE TO
25 THAT PARTICULAR E-MAIL.

1 Q. THERE WAS ACTUALLY NO RESPONSE AT ALL TO THAT
2 E-MAIL?

3 A. CORRECT.

4 THE COURT: NO, THERE WASN'T.

5 BY MR. MAAZEL:

6 Q. OKAY. AND NOW IF WE CAN LOOK AT JX 40. AND IF
7 YOU CAN LOOK AT THE SECOND TO LAST PAGE.

8 A. YES.

9 Q. SO ON MAY 9, 2019, I WROTE YOU AN E-MAIL COPYING
10 MR. GATES, YES?

11 A. THAT'S CORRECT.

12 Q. AND THIS -- AND I WROTE, QUOTE: HI KAT, ON A
13 FEW OCCASIONS, DR. HALDERMAN HAS UNSUCCESSFULLY
14 REQUESTED ACCESS TO TESTING VIDEOS FOR NEW VOTING
15 SYSTEMS, INCLUDING FOR TESTS HE WITNESSED IN PERSON. HE
16 NEEDS TO SEE THOSE VIDEOS TO PERFORM THE ROLE SET FORTH
17 IN SECTION II(4) OF THE SETTLEMENT AGREEMENT AS THE
18 PLAINTIFF DESIGNATE. COULD YOU SEE THAT THIS ISSUE IS
19 PROMPTLY ADDRESSED SO THAT DR. HALDERMAN CAN, PER THE
20 SETTLEMENT, OBSERVE THE CERTIFICATION PROCESS.

21 AND YOU RECEIVED THAT E-MAIL MAY 9TH,
22 CORRECT?

23 A. YES, I SEE THAT'S WHAT YOU WROTE AND I RECEIVED
24 IT.

25 Q. AND THAT IS NOW THE SEVENTH REQUEST FOR TESTING

1 VIDEOS, YES?

2 A. YES.

3 Q. AND YOU DID NOT RESPOND TO THAT REQUEST
4 EITHER -- OR WITHDRAWN.

5 YOU RESPONDED: I WILL CHECK IN WITH THE
6 PROGRAM DIRECTOR, YES?

7 A. YES.

8 Q. AND FIVE DAYS LATER, I WROTE YOU AN E-MAIL ON
9 MAY 14: THANKS. DO WE HAVE ANY UPDATE?

10 SO THAT'S NOW THE EIGHTH REQUEST FOR
11 TESTING VIDEOS, YES?

12 A. YES.

13 Q. AND YOU RESPONDED THAT YOU SHOULD HAVE SOMETHING
14 AVAILABLE BEFORE THE END OF THE WEEK, YES?

15 A. CORRECT.

16 Q. AND THEN YOU PRODUCED VIDEOS FOR THE DOMINION
17 DEMOCRACY SUITE 5.5?

18 A. THAT'S CORRECT.

19 Q. BUT YOU DID NOT PRODUCE THE ES&S VIDEOS,
20 CORRECT?

21 A. NOT AT THAT POINT IN TIME.

22 Q. OKAY. AND THEN ON MAY 21ST, I WROTE YOU SAYING:
23 FEEL FREE TO FORWARD THE VIDEOS FROM ES&S AND OTHER
24 ELECTION SYSTEMS DIRECTLY TO DR. HALDERMAN, YES?

25 A. CORRECT.

1 Q. AND YOU DID NOT RESPOND TO THAT E-MAIL, DID YOU?

2 A. WELL, WE ULTIMATELY SENT THE VIDEOS TO DR.
3 HALDERMAN ON JUNE 5TH.

4 Q. BUT THERE WERE MORE E-MAILS BEFORE THAT, WEREN'T
5 THERE?

6 A. YOU WOULD HAVE TO SHOW ME.

7 Q. IF YOU CAN LOOK AT JX 41.

8 A. YES.

9 Q. ON MAY 28, 2019, DR. HALDERMAN WROTE YOU: THANK
10 YOU FOR THE VIDEOS AVAILABLE FOR THE DOMINION TESTING.
11 ILANN MENTIONED THAT YOU GOING TO UPLOAD THE ES&S VIDEOS
12 NEXT. CAN YOU LET ME KNOW WHEN I CAN RETRIEVE THEM,
13 YES?

14 A. YES.

15 Q. AND THIS IS NOW THE NINTH REQUEST FOR VIDEOS?

16 A. YES.

17 Q. AND YOU DID NOT RESPOND TO THAT E-MAIL, DID YOU?

18 A. NO.

19 Q. THEN ON JUNE 4TH OF 2019 DR. HALDERMAN WROTE YOU
20 FOR THE 10TH TIME, QUOTE: JUST WANTED TO ASK AGAIN
21 ABOUT DOWNLOADING THE OTHER VIDEOS. WILL THEY BE
22 AVAILABLE SOON? THANKS.

23 A. YES.

24 Q. SO TEN TIMES BETWEEN JANUARY 2019 AND JUNE 2019
25 DR. HALDERMAN ASKED YOU FOR TESTING VIDEOS?

1 A. THAT'S CORRECT.

2 Q. THAT WOULD HAVE INCLUDED ANY ES&S TESTING VIDEOS
3 YOU HAD?

4 A. YES, IT WOULD HAVE INCLUDED ES&S BECAUSE THE
5 EXAMINATION HAD OCCURRED AT THAT POINT, AND ACTUALLY THE
6 SYSTEM WAS CERTIFIED AT THAT POINT.

7 Q. AND IF YOU LOOK AT THE STIPULATION NUMBER 69.

8 A. YES.

9 Q. ON JUNE 5, 2019, THE DEPARTMENT FOR THE FIRST
10 TIME PROVIDED DR. HALDERMAN WITH VIDEOS OF THE TESTING
11 OF THE ES&S SYSTEMS, YES?

12 A. THAT'S CORRECT.

13 Q. AND THAT WAS ABOUT FIVE MONTHS AFTER DR.
14 HALDERMAN FIRST REQUESTED THEM, CORRECT?

15 A. SOMEWHERE IN THAT AREA, YES.

16 Q. AND THE VIDEOS THAT YOU FINALLY PROVIDED ON
17 JUNE 5, 2019, HOW MANY HOURS OF VIDEOS DO YOU THINK YOU
18 PRODUCED?

19 A. I ACTUALLY DON'T KNOW WHAT THE TOTAL AMOUNT WAS.
20 LIKE I SAID, THAT EXAMINATION LASTED FOR FOUR DAYS AND
21 THEY WOULD HAVE BEEN FULL DAYS. SO I DON'T KNOW THE
22 EXACT AMOUNT OF TIME.

23 Q. AND THE VIDEO YOU PRODUCED WAS ACTUALLY DOZENS
24 OF VIDEOS OF THAT TESTING, RIGHT? DOZENS OF FILES OF
25 VIDEOS?

1 A. THAT'S MY UNDERSTANDING. I DIDN'T ACTUALLY
2 COMPILE EVERYTHING, BUT THAT'S MY UNDERSTANDING.

3 Q. NOW, THOSE TESTING VIDEOS WERE FOR TESTS DONE
4 WHEN?

5 A. SO I THINK THAT THAT WOULD HAVE BEEN THE ON-SITE
6 EXAMINATION FOR THE ES&S 6000 SYSTEM, WHICH WOULD HAVE
7 BEEN IN JUNE OF 2018. LIKE I MENTIONED, ES&S, LIKE
8 EVERY OTHER VENDOR, HAD TROUBLE WITH THE UNIQUE METHOD
9 OF STRAIGHT-PARTY VOTING IN PENNSYLVANIA. AND SO THEY
10 HAD TO GO BACK AND DO A SUBSEQUENT VERSION, WHICH WAS
11 THE 6021. BUT I THINK THE VIDEOS WERE FOR THE ON-SITE
12 EXAMINATION THAT OCCURRED IN JUNE OF 2018.

13 Q. OKAY. SO THERE WAS TESTING OF THE ES&S SYSTEM
14 IN JUNE 2018 AND THAT LED THE DEPARTMENT TO REJECT THE
15 SYSTEM, YES?

16 A. RIGHT, BECAUSE THERE WAS A FUNCTIONALITY ISSUE.

17 Q. AND THEN THERE WAS SOME ADDITIONAL TESTING DONE
18 IN OCTOBER 2018?

19 A. YES, THAT'S CORRECT.

20 Q. AND DID YOU EVER PRODUCE TO DR. HALDERMAN THE
21 VIDEOS FOR OCTOBER 2018?

22 A. I'M SORRY, SEPTEMBER OF 2018. THE -- SO THE
23 SECOND -- THE VERSION 6021 WAS LOOKED AT IN SEPTEMBER OF
24 2018. THAT'S WHAT WAS ON THE STATUS REPORT.

25 Q. SO DID YOU EVER PROVIDE DR. HALDERMAN THE VIDEOS

1 FOR THE SEPTEMBER 2018 TESTING?

2 A. THAT EXAMINATION WAS NOT DONE ON SITE IN
3 HARRISBURG. THAT WAS NOT AN EXAMINATION THAT WAS DONE
4 IN HARRISBURG THAT WAS OPEN TO THE PUBLIC. OUR
5 EXAMINERS, BECAUSE IT WAS A LIMITED FIX, IT WAS JUST
6 ABOUT THE STRAIGHT-PARTY ISSUE, OUR EXAMINERS JUST
7 REVIEWED THAT ISSUE IN THEIR LABS IN COLORADO.

8 Q. THE SEPTEMBER 2018 TESTING TOOK PLACE OVER
9 MULTIPLE DAYS, YES?

10 A. I BELIEVE THAT THERE WERE SEVERAL DAYS, YES.

11 Q. AND YOU ARE SAYING ALL OF THAT TESTING TOOK
12 PLACE IN COLORADO?

13 A. THAT'S MY UNDERSTANDING, YES.

14 Q. AND FOR JUST A DIRECT ANSWER TO MY QUESTION:
15 DID YOU EVER PRODUCE THE VIDEOS FROM SEPTEMBER 2018 TO
16 DR. HALDERMAN?

17 A. NO.

18 THE COURT: WERE THERE VIDEOS?

19 THE WITNESS: I'M NOT SURE IF THERE WERE
20 VIDEOS.

21 BY MR. MAAZEL:

22 Q. AND IT WAS THE SEPTEMBER 2018 TESTING THAT
23 ACTUALLY LED YOU TO CERTIFY THIS 6021 SUITE, YES?

24 A. NO. ACTUALLY, I MEAN, THE JUNE 2018 TESTING WAS
25 ALSO RELEVANT, BECAUSE THE ONLY THING THAT CHANGED ABOUT

1 THE SYSTEM WAS THIS FIX TO THE PA -- THE PENNSYLVANIA
2 METHOD OF STRAIGHT-PARTY VOTING.

3 Q. SO IT WAS ONE YEAR BETWEEN WHEN YOU HAD THE
4 VIDEOS OF THE ES&S TESTING FOR THE XL AND WHEN YOU
5 PRODUCED THEM TO DR. HALDERMAN, CORRECT?

6 A. IT WAS ONE YEAR. BUT AS WE COVERED, THE REQUEST
7 WAS MADE IN JANUARY OF 2019.

8 MR. MAAZEL: I HAVE NO FURTHER QUESTIONS,
9 THANK YOU.

10 THE COURT: MR. WIYGUL?

11 CROSS EXAMINATION

12 BY MR. WIYGUL:

13 Q. GOOD EVENING, MS. KOTULA.

14 A. GOOD EVENING.

15 Q. DID YOU HAVE AN UNDERSTANDING -- MR. MAAZEL
16 SPENT A LOT OF TIME TALKING TO YOU ABOUT VIDEOS. WHEN
17 THE REQUESTS FOR VIDEOS CAME TO YOU, DID YOU HAVE AN
18 UNDERSTANDING AS TO WHETHER PLAINTIFFS HAD A RIGHT UNDER
19 THE SETTLEMENT AGREEMENT TO OBTAIN VIDEOS OF
20 EXAMINATIONS OF SYSTEMS THAT HAD BEEN EXAMINED PRIOR TO
21 THE SIGNING OF THE SETTLEMENT AGREEMENT?

22 A. YES. AND MY UNDERSTANDING WAS THAT THE
23 SETTLEMENT AGREEMENT ENTITLED THEM TO NAME A
24 REPRESENTATIVE THAT COULD ATTEND ON-SITE EXAMINATIONS.
25 THE VIDEOS WERE OF PREVIOUS EXAMINATIONS. SO ANY FUTURE

1 EXAMINATIONS IS THE UNDERSTANDING OF THE SETTLEMENT
2 AGREEMENT.

3 THE COURT: WHY DON'T YOU MOVE THE MIC A
4 LITTLE CLOSER TO YOU, MR. WIYGUL.

5 BY MR. WIYGUL:

6 Q. AND COULD WE -- COULD YOU LOOK AT JX 30, WHICH I
7 THINK WE HAVE ALL PROBABLY MEMORIZED BY NOW, BUT THAT'S
8 THE SETTLEMENT AGREEMENT. CAN YOU TAKE A LOOK AT
9 PARAGRAPH 4, MS. KOTULA. AND CAN YOU TELL ME, IS THIS
10 THE PARAGRAPH THAT YOU WERE REFERRING TO WHEN YOU WERE
11 OFFERING YOUR INTERPRETATION OF THE SETTLEMENT
12 AGREEMENT?

13 A. THAT'S CORRECT.

14 Q. CAN YOU POINT TO WHAT YOU THINK THE RELEVANT
15 LANGUAGE IS THAT INFORMED YOUR UNDERSTANDING ABOUT WHAT
16 PLAINTIFFS WERE ENTITLED TO, IF ANYTHING, REGARDING
17 VIDEOS?

18 A. THERE IS NOTHING IN HERE ABOUT VIDEOS.

19 Q. WHAT ABOUT WHAT THEY WERE ENTITLED TO WITH
20 REGARDING ACCESS TO EXAMINATIONS?

21 THE COURT: IF IT SAVES TIME, IT SAYS:
22 ALL CURRENTLY SCHEDULED OR FUTURE SCHEDULED ON-SITE
23 CERTIFICATIONS.

24 MR. WIYGUL: THANK YOU, YOUR HONOR.

25 BY MR. WIYGUL:

1 Q. AND 4B, WHAT DOES THAT SAY ABOUT THE KIND OF
2 EXAMINATIONS THAT THE PLAINTIFFS ARE ENTITLED TO ATTEND?

3 A. ON-SITE CERTIFICATION TESTING.

4 Q. NOW, DESPITE THE FACT THAT GIVEN THE TESTIMONY
5 YOU JUST GAVE, PLAINTIFFS WERE NOT ENTITLED TO OBTAIN
6 VIDEOS OF THE JUNE 2ND, 2018 ES&S EVS 6000 EXAMINATION
7 OR THE 6021 EXAMINATION, WHY DID YOU UNDERTAKE TO
8 PROVIDE THEM WITH A COPY OF THE EVS 6000 EXAMINATION?

9 A. OUR CLIENTS DECIDED, IN AN EFFORT TO BE GOOD
10 PARTNERS, THAT AS A COURTESY THAT WE WOULD TAKE THEIR
11 REQUESTS UNDER CONSIDERATION AND DECIDED THAT WE WOULD
12 GO AHEAD AND FULFILL THEIR REQUEST. AGAIN, THOUGH, I
13 HAVE TO STRESS THAT AS WE HAVE COVERED, THE ES&S EXAM
14 ALONE WAS FOUR DAYS. AND ALL OF THESE OTHER SYSTEMS
15 WERE JUST THE SAME. I MEAN, THREE OR FOUR DAYS IS
16 PROBABLY THE TYPICAL TIME PERIOD FOR THESE EXAMINATIONS.
17 AND THEY ARE LONG DAYS. SO IT'S A LOT OF VIDEO.

18 AND SO OUR CLIENTS, YOU KNOW, IN LIGHT OF
19 OTHER COMPETING PRIORITIES THAT WERE HAPPENING AT THE
20 TIME, INCLUDING THE 2019 MUNICIPAL ELECTION, THE RUN-UP
21 UP TO THAT, OUR CLIENTS DID THE BEST THAT THEY COULD IN
22 TERMS OF GETTING TO THESE VIDEOS AS QUICKLY AS POSSIBLE
23 AND GATHERING ALL OF THE FILES, HAVING THE VENDORS --
24 LIKE I SAID, WE DECIDED THAT WE NEEDED TO HAVE THE
25 VENDORS REVIEW THE VIDEOS, BECAUSE OF THE FACT THAT WE

1 WANTED TO MAKE SURE THAT THERE WAS NO PROPRIETARY
2 INFORMATION THAT WOULD INADVERTENTLY BE DISCLOSED IN
3 SOME WAY.

4 SO WE PUT THE BURDEN ON THE VENDORS TO
5 ACTUALLY DO THAT WORK. AND SO WE HAD TO WAIT FOR THE
6 VENDORS TO RESPOND TO US. AND THEN THERE WAS THE
7 REDACTION PROCESS, IF THERE WERE ANY REDACTIONS THAT
8 WERE REQUESTED THAT WE HAD TO MANAGE. SO IT WAS A LOT
9 OF WORK WHEN YOU CONSIDER ALL OF THE DATA AND ALL OF THE
10 VIDEO FILES THAT THAT ENCOMPASSES.

11 Q. I JUST WANT TO DRILL DOWN ON A FEW THINGS YOU
12 SAID IN YOUR TESTIMONY. FIRST OF ALL, DID YOU, OR THE
13 DEPARTMENT FOR THAT MATTER, HAVE CONTROL OF THE TIMING
14 OF WHEN THE VIDEOS COULD BE PROVIDED?

15 A. NOT REALLY. BECAUSE ONCE WE DECIDED TO INVOLVE
16 THE VENDORS AND KIND OF SHIFT THE BURDEN TO THE VENDORS
17 TO TELL US ABOUT PROPRIETARY INFORMATION, TO SOME EXTENT
18 WE WERE RELYING ON THEM TO RESPOND.

19 Q. AND YOU MENTIONED THERE WERE SEVERAL DIFFERENT
20 EXAMINATIONS, SEVERAL DIFFERENT SYSTEMS THAT YOU WERE
21 WORKING ON PROVIDING TO THE PLAINTIFFS. WERE YOU
22 WORKING ON THAT, ON PROVIDING THE VIDEOS FOR ALL OF THE
23 SYSTEMS AT THE SAME TIME?

24 A. YES, THAT'S MY UNDERSTANDING.

25 Q. DID PLAINTIFFS EVER TELL YOU, WE WOULD LIKE YOU

1 TO PRIORITIZE ES&S OR SOME OTHER SYSTEM OVER THE OTHER
2 SYSTEMS?

3 A. NO, THERE WAS NEVER A REQUEST TO DO THAT.

4 Q. YOU MENTIONED BEFORE -- IN YOUR TESTIMONY WITH
5 MR. MAAZEL YOU MENTIONED THE SEPTEMBER 21, 2018, WE CALL
6 IT THE BUILDING STATUS REPORT, JX 12. WAS IT YOUR
7 UNDERSTANDING THAT PLAINTIFFS HAD BEEN INFORMED OF THE
8 EXAMINATION STATUS OF THE ES&S 6021 SYSTEM?

9 A. YES.

10 Q. WHAT SPECIFICALLY HAD THEY HAD BEEN TOLD ABOUT
11 IT, AS OF THE TIME THAT MS. UNGER SENT HER SEPTEMBER 28,
12 2018 E-MAIL CONTAINED IN THIS DOCUMENT?

13 A. SO THE STATUS REPORT SAYS THAT THE PA TESTING ON
14 THE NEW RELEASE OF THE EVS 6021 WITH FIXES TO ANOMALIES
15 SCHEDULED DURING THE WEEK OF SEPTEMBER 24, 2018.

16 Q. AND WHEN PLAINTIFFS RECEIVED THIS DOCUMENT FROM
17 DEFENDANTS ON SEPTEMBER 28TH, DID THEY SAY AT THAT POINT
18 WE WOULD LIKE TO GET VIDEO OF THAT EXAMINATION OR ANY
19 OTHER EXAMINATION OF THE EVS SYSTEM?

20 A. NO.

21 Q. AND THERE'S BEEN DISCUSSION OF AN OCTOBER 9TH
22 E-MAIL, OCTOBER 9TH, 2018, WHERE MR. MAAZEL PROVIDED
23 SOME COMMENTS FROM DR. HALDERMAN TO THE DEFENDANTS. YOU
24 HEARD THAT TESTIMONY?

25 A. I DID.

1 Q. ARE YOU FAMILIAR WITH THAT E-MAIL?

2 A. YES.

3 Q. WE MAY COME BACK TO IT A BIT LATER. BUT IN THAT
4 E-MAIL AND ANY OF THE CONVERSATIONS THAT YOU HAD WITH
5 DEFENDANTS AROUND THAT TIME, DID DEFENDANTS EVER SAY
6 ANYTHING LIKE WE PROVIDED YOU WITH COMMENTS FROM DR.
7 HALDERMAN ABOUT THE EXPRESSVOTE MACHINES BUT WE ACTUALLY
8 NEED TO SEE VIDEOS IN ORDER TO PROVIDE ADDITIONAL
9 COMMENTS TO YOU?

10 A. NO.

11 Q. WAS THERE ANY MENTION OF THE VIDEOS AT THAT
12 POINT?

13 A. NO.

14 Q. WHEN WAS THE FIRST TIME YOU UNDERSTOOD
15 PLAINTIFFS TO MAKE A REQUEST FOR THE VIDEOS OF THE
16 EXAMINATION OF THE EVS SYSTEM?

17 A. OF THE EVS 6021 WOULD HAVE BEEN WHEN DR.
18 HALDERMAN MADE THE REQUEST ON JANUARY 29TH OF 2019.

19 Q. LET'S LOOK AT THAT E-MAIL. I THINK IT WAS PX
20 1001, BUT RATHER THAN LOOK AT THAT WHOLE CHAIN, I THINK
21 WE HAVE A SHORTER EXAMPLE AT JX 36. ARE YOU THERE?

22 A. YES.

23 Q. AM I RIGHT, FIRST OF ALL, IS THIS A COPY OF THE
24 JANUARY 29, 2019 E-MAIL BY DR. HALDERMAN TO YOU AND JOHN
25 HARTZELL WITHOUT THE REST OF THE E-MAIL CHAIN?

1 A. IT IS.

2 Q. AND DR. HALDERMAN, AMONG OTHER THINGS IN THIS
3 E-MAIL, IS TALKING ABOUT THE EXAMINATION OF THE HART
4 SYSTEM, RIGHT, THAT HAD RECENTLY TAKEN PLACE?

5 A. THAT'S CORRECT.

6 Q. AND HE IS PROVIDING SOME FEEDBACK ON THAT
7 EXAMINATION, CORRECT?

8 A. THAT'S CORRECT.

9 Q. I JUST WANT TO TAKE YOU TO THE SECTION ON
10 AUDITABILITY?

11 A. YES.

12 MR. MAAZEL: YOUR HONOR, I MEAN, THIS IS
13 NOT IN EVIDENCE, BUT I HAVE NO OBJECTION TO PUTTING IT
14 INTO EVIDENCE.

15 THE COURT: THEN IT WILL BE ADMITTED.
16 JOINT EXHIBIT 36 WILL BE ADMITTED.

17 (JOINT EXHIBIT JX 36 ADMITTED INTO
18 EVIDENCE.)

19 BY MR. WIYGUL:

20 Q. YOU ARE THERE AT THE AUDITABILITY SECTION?

21 A. I AM.

22 Q. YOU SEE THERE'S AN BOLDED BULLET POINT?

23 A. YES.

24 Q. AND DR. HALDERMAN SAYS: I HAVE SERIOUS CONCERNS
25 ABOUT WHETHER THE VERITY PRINTING BMD SYSTEM CAN SUPPORT

1 RIGOROUS POST-ELECTION AUDITS.

2 DO YOU SEE THAT?

3 A. I DO.

4 Q. AND THEN HE TALKS ABOUT IN THE NEXT LINE HOW THE
5 PRINTOUT OF THE VERITY SYSTEM WE WERE TALKING ABOUT IS A
6 SUMMARY BALLOT.

7 DO YOU SEE THAT?

8 A. I DO.

9 Q. ALL RIGHT. AND WHAT -- DO YOU HAVE AN
10 UNDERSTANDING AS TO WHAT HE MEANS BY SUMMARY BALLOT?

11 A. AGAIN, IT'S A BALLOT THAT HAS THE VOTER'S
12 SELECTIONS LISTED ON IT.

13 Q. AND THAT'S AS OPPOSED TO A BALLOT YOU WERE
14 REFERENCING THAT PRINTS ALL OF THE OPTIONS?

15 A. THAT'S CORRECT.

16 Q. SO UNDER THAT DEFINITION, WOULD THE EXPRESSVOTE
17 XL PAPER RECORD ALSO BE A SUMMARY BALLOT?

18 A. YES.

19 Q. AND IN THE LAST SENTENCE -- CAN YOU READ THE
20 LAST SENTENCE OF THAT AUDITABILITY SECTION, PLEASE?

21 THE COURT: THE ONE, I'M MORE WORRIED?

22 MR. WIYGUL: NO. I'M SORRY. THE ONE
23 THAT BEGINS: ABSENT THESE SAFEGUARDS. THE THIRD
24 PARAGRAPH UNDER AUDITABILITY, THE LAST SENTENCE.

25 THE WITNESS: ABSENT THESE SAFEGUARDS,

1 THE PAPER BALLOTS DON'T PROVIDE ROBUST PROTECTION.

2 BY MR. WIYGUL:

3 Q. SO DID YOU HAVE AN UNDERSTANDING BASED ON
4 READING THIS E-MAIL AS TO WHETHER DR. HALDERMAN BELIEVED
5 OR WAS TERMING SUMMARY BALLOTS TO BE PAPER BALLOTS?

6 A. HE WAS.

7 Q. OKAY. CAN WE LOOK AT EXHIBIT 59, PLEASE, WHICH
8 I BELIEVE IS IN EVIDENCE. IS THIS AN EXAMPLE, MS.
9 KOTULA, OF A HART SUMMARY BALLOT?

10 A. IT IS.

11 Q. WE HAVE LOOKED AT IN THIS CASE SO FAR IN TODAY'S
12 PROCEEDING AT LEAST A COUPLE OF DIFFERENT EXAMPLES OF
13 THE VOTING SYSTEM STATUS REPORTS THAT THE DEPARTMENT PUT
14 OUT. JUST TO BE CLEAR, WERE THOSE -- EACH OF THOSE
15 POSTED ON THE DEPARTMENT'S WEBSITE?

16 A. YES. THOSE REPORTS WERE POSTED USUALLY ON A
17 MONTHLY BASIS, THERE WOULD BE UPDATES. I THINK THEY
18 STARTED IN MARCH OF 2018. THEY WENT THROUGH WHEN ALL
19 THE SYSTEMS WERE CERTIFIED.

20 Q. AND WERE THEY EACH POSTED ON OR ABOUT THE DAY
21 THAT THE REPORT ITSELF IS DATED?

22 A. YES.

23 Q. CAN WE LOOK AT DX S, PLEASE.

24 THE COURT: S AS IN SAM?

25 MR. WIYGUL: S AS IN SAM, YOUR HONOR,

1 YES. AND, YOUR HONOR I WOULD MOVE THIS INTO EVIDENCE.

2 I DON'T BELIEVE IT HAS BEEN MOVED YET.

3 MR. MAAZEL: NO OBJECTION.

4 THE COURT: IT WILL BE ADMITTED.

5 (DEFENSE DX S ADMITTED INTO EVIDENCE.)

6 BY MR. WIYGUL:

7 Q. MS. KOTULA, DO YOU RECOGNIZE THIS DOCUMENT?

8 A. I DO.

9 Q. CAN YOU TELL US WHAT THIS IS?

10 A. SO THIS WOULD BE THE JANUARY 4, 2019 VERSION OF
11 THE STATUS REPORT THAT WE HAVE BEEN TALKING ABOUT ALL
12 DAY.

13 Q. WAS THIS POSTED ON THE DEPARTMENT'S WEBSITE ON
14 OR AROUND JANUARY 4, 2019?

15 A. YES, AND I THINK IT'S STILL POSTED ON THE
16 DEPARTMENT'S WEBSITE.

17 Q. DOES THIS DOCUMENT PROVIDE AN UPDATE ON
18 CERTIFICATION STATUS OF THE ES&S 6021 SYSTEM?

19 A. IT DOES.

20 Q. WHAT DOES IT SAY?

21 A. IT SAYS THAT THE CERTIFICATION IS COMPLETE.

22 Q. CAN WE LOOK AT DX T, AS IN TIMOTHY, PLEASE.

23 A. I'M THERE.

24 MR. WIYGUL: AND I MOVE THIS INTO
25 EVIDENCE, TOO, PLEASE, YOUR HONOR.

1 MR. MAAZEL: NO OBJECTION.

2 THE COURT: IT WILL BE ADMITTED.

3 (DEFENSE EXHIBIT DX T ADMITTED INTO
4 EVIDENCE.)

5 BY MR. WIYGUL:

6 Q. JUST TO CUT TO THE CHASE. MS. KOTULA, WAS THIS
7 ALSO POSTED ON THE DEPARTMENT'S WEBSITE ON FEBRUARY 6,
8 2019?

9 A. YES.

10 Q. DOES IT ALSO REPORT THAT THE ES&S EVS 6021
11 CERTIFICATION IS COMPLETE?

12 A. YES.

13 Q. CAN WE LOOK AT EXHIBIT U, PLEASE. DX U.

14 MR. WIYGUL: WHICH I MOVE INTO EVIDENCE.

15 MR. MAAZEL: NO OBJECTION.

16 THE COURT: IT WILL BE ADMITTED.

17 (DEFENSE EXHIBIT DX U ADMITTED INTO
18 EVIDENCE.)

19 BY MR. WIYGUL:

20 Q. SAME QUESTION, MS. KOTULA. IS THIS ANOTHER
21 EXAMPLE OF A VOTING SYSTEMS STATUS REPORT?

22 A. YES.

23 Q. AND IT'S DATED MARCH 6, 2019, CORRECT?

24 A. THAT'S CORRECT.

25 Q. IS THAT WHEN IT WAS POSTED OR ABOUT WHEN IT WAS

1 POSTED TO THE DEPARTMENT'S WEBSITE?

2 A. YES.

3 Q. AND IT ALSO INFORMS THE READER THAT THE ES&S EVS
4 6021 WAS CERTIFIED, IS THAT CORRECT?

5 A. CORRECT.

6 MR. WIYGUL: YOUR HONOR, I SEE IT'S ABOUT
7 6 O'CLOCK. I WAS GOING TO CHANGE GEARS TO ANOTHER
8 TOPIC. I DON'T KNOW IF NOW WOULD BE --

9 THE COURT: YEAH. I THINK MAYBE THIS
10 WOULD BE A GOOD TIME TO BREAK. WHAT TIME WOULD THE
11 PARTIES LIKE TO RESUME TOMORROW MORNING?

12 MR. ARONCHICK: 9 O'CLOCK, IF THAT'S
13 ACCEPTABLE?

14 THE COURT: 9 O'CLOCK?

15 MR. MAAZEL: I AGREE WITH THAT, IF
16 POSSIBLE.

17 MR. ARIBCGUCJ: YOU CAN'T STAY UNTIL
18 TOMORROW?

19 THE WITNESS: ACTUALLY, I HAVE A SICK
20 CHILD AT HOME. SO I WOULD APPRECIATE IT IF THERE IS ANY
21 WAY WE COULD GET DONE THIS EVENING.

22 THE COURT: IT HAS NOTHING TO DO WITH THE
23 PEOPLE IN THE COURTROOM, BUT THE PEOPLE IN THE REST OF
24 THE BUILDING. CAN YOU MAKE IT BACK HERE TOMORROW AT ANY
25 TIME?

1 THE WITNESS: YEAH, I JUST PROBABLY NEED
2 TO MAKE SOME ARRANGEMENTS.

3 THE COURT: OKAY.

4 THE WITNESS: SORRY.

5 THE COURT: NO, NO. DON'T APOLOGIZE. I
6 APOLOGIZE FOR IMPOSING ON YOU. WHY DON'T YOU TALK WITH
7 THE LAWYERS ABOUT WHEN YOU THINK YOU CAN MAKE IT BACK
8 AND WE WILL SCHEDULE AROUND YOU.

9 THE WITNESS: OKAY. THANK YOU. I
10 APPRECIATE IT.

11 THE COURT: SURE.

12 OKAY THEN. YOU THINK YOU CAN GET STARTED
13 WITH A WITNESS AT 9 O'CLOCK? DO YOU HAVE ANOTHER
14 WITNESS YOU WANT TO CALL, MR. MAAZEL?

15 MR. MAAZEL: DR. HALDERMAN WE WERE GOING
16 TO CALL. WE ARE GOING TO CALL DR. HALDERMAN IN THE CASE
17 AND HE CAN BE HERE AT 9:00.

18 THE COURT: ALL RIGHT. THAT IS ALL
19 RIGHT, MR. ARONCHICK?

20 MR. ARONCHICK: SURE.

21 THE COURT: ALL RIGHT. THEN WE WILL
22 BEGIN WITH DR. HALDERMAN AT 9 O'CLOCK. DON'T GIVE IT A
23 SECOND THOUGHT.

24 THE WITNESS: YEAH, I WILL WORK IT OUT
25 WITH FAMILY.

1 MR. ARONCHICK: ANY OPTION TO FINISH THE
2 TESTIMONY TELEPHONICALLY?

3 THE COURT: WORK IT OUT. PARTICULARLY IF
4 WE CAN DO A VIDEO CONFERENCE, IF YOU COULD WORK IT OUT
5 WITH MR. MAAZEL, I HAVE NO OBJECTION TO IT.

6 MR. MAAZEL: I HAVE NO OBJECTION AT ALL,
7 YOUR HONOR.

8 THE COURT: OKAY.

9 MR. MAAZEL: WHATEVER WE CAN DO TO
10 ACCOMMODATE THE WITNESS.

11 THE COURT: OKAY. I ASSUME YOU DON'T
12 LIVE IN THE PHILADELPHIA AREA?

13 THE WITNESS: NO, I AM IN THE HARRISBURG
14 AREA.

15 THE COURT: OKAY. WE WILL SEE IF WE CAN
16 GET YOU ON VIDEO.

17 THE WITNESS: I APPRECIATE IT.

18 THE COURT: CERTAINLY. AND THEN WE WILL
19 START TOMORROW MORNING AT 9:00 A.M. MY THANKS TO
20 COUNSEL FOR ALL OF YOUR HARD WORK. I HOPE YOUR CLIENTS
21 APPRECIATE IT AS MUCH AS I DO.

22 ALL COUNSEL: THANK YOU, YOUR HONOR.

23 MR. KESSLER: YOUR HONOR, WE HAVE THE
24 MACHINE.

25 THE COURT: YES. NO ONE IS GOING TO MAKE

1 OFF WITH IT, MR. KESSLER.

2 MR. KESSLER: ANY CHANCE -- THERE IS ONE
3 IN CHAMBERS ALREADY.

4 THE COURT: THERE IS?

5 MR. KESSLER: MAYBE ROLL THE OTHER ONE --

6 THE COURT: THERE'S ONE IN THE JURY ROOM?

7 IF YOU CAN GET ACCESS TO THE JURY ROOM, THAT'S FINE.

8 HONESTLY, THE JURY ROOM IS NO MORE SECURE THAN THE

9 COURTROOM. THEY WILL BOTH BE LOCKED AT NIGHT. AND WE

10 HAVE TERRIBLY VALUABLE ORIGINAL OIL PAINTINGS THAT HAVE

11 NEVER BEEN MONKEYED WITH BEFORE.

12 (COURT ADJOURNED.)

13

14 I CERTIFY THAT THE FOREGOING IS A CORRECT

15 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

16 ABOVE-ENTITLED MATTER.

17

18

2/26/20
DATE

19

20

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25

OFFICIAL COURT REPORTER

LYNN GLIGOR, RMR.

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2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 KATHY BOOCKVAR

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5 BY MR. ARONCHICK -- 47 -- --

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